

SDMS DOCID# 1133544

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRADLEY MINING COMPANY,
et al.,

Defendants.

Case No. 3:08-CV-03968 TEH

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRADLEY MINING COMPANY,

Defendant.

Case No. 3:08-CV-05501 TEH

~~PROPOSED~~ ORDER APPROVING ENTRY OF CONSENT DECREE

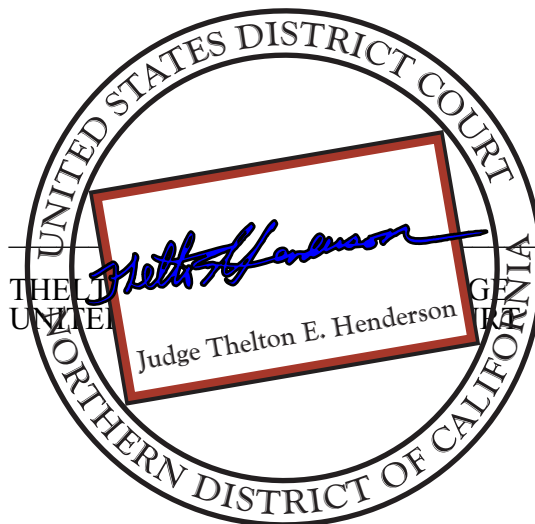
On February 14, 2012, Plaintiff United States filed a notice of lodging of Consent Decree with Defendants, Bradley Mining Company and Frederick Bradley, Trustee for the Worthen Bradley Family Trust, and the Intervenor, the Elem Indian Colony of Pomo Indians, a federally recognized Tribe. Court Document Number (“DN”) 84. The United States attached a copy of the proposed Consent Decree to the notice of lodging. *Id.*, Attachment A. After providing an opportunity for public comment, the United States filed an unopposed motion to enter the Consent Decree on April 2, 2012. DN 87.

After review of the United States’ motion, the Court has determined that the Consent Decree meets the standard for entry because it is reasonable, fair, and consistent with the purposes that the Comprehensive Environmental Response, Compensation, and Liability Act is intended to serve. U.S. v. Montrose Chemical Corp. of California, 50 F.3d 741, 747 (9th Cir. 1995). Accordingly, the Court grants the United States’ motion to enter and approves entry of

1 the Consent Decree.

2 IT IS SO ORDERED.

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4 Dated: 04/18/2012



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1 IGNACIA S. MORENO
Assistant Attorney General
2 Environment and Natural Resources Division
U.S. Department of Justice
3

4 ROBERT D. MULLANEY (Cal. Bar No. 116441)
Senior Counsel
LOREN REMSBERG
5 PAUL CIRINO
Trial Attorneys
6 Environment and Natural Resources Division
U.S. Department of Justice
7 301 Howard Street, Suite 1050
San Francisco, CA 94105
8 Tel: (415) 744-6491
Fax: (415) 744-6476
9 E-mail: Robert.Mullaney@usdoj.gov
Loren. Remsberg@usdoj.gov
10 Paul.Cirino@usdoj.gov

11 Attorneys for Plaintiff and Counter-Defendant United States of America

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA,)
16 Plaintiff,)
17 v.)
18 BRADLEY MINING COMPANY,)
et al.,)
19 Defendants.)
20 _____)

Case No. 3:08-CV-03968 TEH

CONSENT DECREE

21 UNITED STATES OF AMERICA,)
22 Plaintiff,)
23 v.)
24 BRADLEY MINING COMPANY,)
25 Defendant.)
26 _____)

Case No. 3:08-CV-05501 TEH

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1 I. BACKGROUND

2 A. The United States of America (“United States”), on behalf of the Administrator of
3 the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter
4 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and
5 Liability Act (“CERCLA”), 42 U.S.C. § 9607, against Bradley Mining Company, a California
6 corporation (“Bradley Mining”), and Frederick Bradley, in his representative capacity as Trustee
7 of the Worthen Bradley Family Trust (“Bradley Trust”) (collectively, “Defendants”). Case No.
8 3-08-CV-03968 TEH, Court Document No. (“DN”) 1.

9 B. The United States in its complaint seeks, inter alia: (1) reimbursement from
10 Bradley Mining and Bradley Trust of costs incurred by EPA and the United States Department of
11 Justice (“DOJ”) for response actions at the Sulphur Bank Mercury Mine Superfund Site in Lake
12 County, California (“Sulphur Bank Site”), together with accrued interest; and (2) a declaratory
13 judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Bradley Mining
14 and Bradley Trust are jointly and severally liable for future response costs incurred by the United
15 States in connection with the Sulphur Bank Site. Bradley Mining and Bradley Trust filed a
16 counterclaim in this matter, alleging that the United States is liable for response costs related to
17 the Sulphur Bank Site under CERCLA and state law. Case No. 3-08-CV-03968 TEH, DN 22,
18 24.

19 C. The Elem Tribe alleges that Bradley Mining, Bradley Trust, and the United States
20 are liable for: (1) damages for injury to, destruction of, or loss of natural resources related to the
21 Sulphur Bank Site; (2) the costs of any natural resource damage (“NRD”) assessments; and
22 (3) past and future response costs. The Elem Tribe asserts that it timely filed on Bradley Mining,
23 Bradley Trust, and the United States all required notices of intent to sue. The Elem Tribe intends
24 to file a motion to intervene and an attached complaint in intervention asserting a CERCLA
25 action (“the Elem Tribe CERCLA case”).

26 D. The United States also filed a complaint against Bradley Mining in U.S. District
27 Court in Idaho, seeking reimbursement from Bradley Mining of costs incurred by EPA, the
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1 United States Department of Agriculture Forest Service (“Forest Service”), and DOJ for
2 response actions at the Stibnite Mine Site in Valley County, Idaho (“Stibnite Mine Site”). Case
3 No. 08-CV-00410 EJL (D. Idaho), DN 1. After the District Court in Idaho granted the parties’
4 motion to transfer venue to the Northern District of California (*id.*, DN 9), Bradley Mining filed
5 a counterclaim, alleging that the United States is liable for response costs related to the Stibnite
6 Mine Site under CERCLA and state law. *Id.*, DN 11. This Court reassigned the Stibnite Mine
7 Site case to Judge Henderson as a related case to the Sulphur Bank Site case. Case No. 3-08-
8 CV-03968 TEH, DN 31. The Stibnite Mine Site case is now entitled United States v. Bradley
9 Mining Co., Case No. 3-08-CV-05501 TEH (N.D. Cal.). Bradley Mining re-filed its
10 counterclaim in the Stibnite Mine Site case. *Id.*, DN 4.

11 E. The United States asserts that, on behalf of various federal agencies, it resolved
12 its alleged liability at the Stibnite Mine Site through an administrative, court-approved settlement
13 in Mobil Oil Corp. v. United States, Civil Action No. 99-1467-A (E.D. Va.). The United States
14 further asserts that federal agencies involved in that case, including the Forest Service, received
15 contribution protection under CERCLA Sections 113(f)(2) and 122(h)(4) for “matters
16 addressed,” which include any and all past or future response costs taken and to be taken by or at
17 the direction of the United States and all response costs incurred and to be incurred in connection
18 with the Stibnite Mine Site.

19 F. EPA sent a general notice letter to Bradley Mining notifying it that EPA regards
20 Bradley Mining as a potentially responsible party (“PRP”) under CERCLA for costs incurred
21 and to be incurred with respect to the Mt. Diablo Mercury Mine Site in Contra Costa County,
22 California, also known as the Marsh Creek Road Abandoned Dump Site (“Mt. Diablo Mine
23 Site”).

24 G. The Forest Service asserted a CERCLA cost-recovery claim against Bradley
25 Mining seeking reimbursement of costs incurred and to be incurred with respect to the
26 Springfield Scheelite Mine Site in Valley County, Idaho (“Springfield Mine Site”).

27 H. The United States Department of the Interior Bureau of Land Management
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1 (“BLM”) asserted a CERCLA cost-recovery claim against Bradley Mining seeking
2 reimbursement of costs incurred and to be incurred with respect to the IMA Mine Site in Lemhi
3 County, Idaho (“IMA Mine Site”).

4 I. BLM and EPA asserted a CERCLA cost-recovery claim against Bradley Mining
5 seeking reimbursement of costs incurred and to be incurred with respect to the Bretz Mine Site in
6 Malheur County, Oregon (“Bretz Mine Site”).

7 J. EPA asserted a CERCLA cost-recovery claim against Bradley Mining seeking
8 reimbursement of costs incurred and to be incurred with respect to the Opalite Mine Site in
9 Malheur County, Oregon (“Opalite Mine Site”).

10 K. The United States has requested and reviewed Financial Information from
11 Bradley Mining and Bradley Trust to determine whether each of the Defendants is financially
12 able to pay response costs incurred and to be incurred at the Sulphur Bank Site, the Mt. Diablo
13 Mine Site, the Stibnite Mine Site, the Springfield Mine Site, the IMA Mine Site, the Bretz Mine
14 Site, and the Opalite Mine Site (collectively, the “Covered Sites”). Based upon this Financial
15 Information, the United States has determined that Bradley Mining and Bradley Trust are able to
16 pay no more than the amounts specified in Section VII (Payments by Defendants and Settling
17 Federal Agencies) of this Decree and the property Assignment specified in Section VIII
18 (Redevelopment Trust; Defendants’ Assignment of Property) of this Decree.

19 L. The Settling Defendants that have entered into this Consent Decree do not
20 admit any liability to anyone, including without limitation, the United States or the Elem Tribe
21 arising out of the transactions or occurrences alleged in the complaints in the Sulphur Bank Site
22 case (United States’ complaint and the Elem Tribe’s complaint in intervention) and the Stibnite
23 Mine Site case, or concerning the Mt. Diablo Mine Site, the Springfield Mine Site, the IMA
24 Mine Site, the Bretz Mine Site, and the Opalite Mine Site, and do not admit any of the
25 allegations or assertions of the complaints, notice letters, or other demands, or any related
26 liability arising out of the transactions or occurrences that have been, or could be alleged by the
27 United States, the Elem Tribe, or others, except as otherwise specifically stated in this Consent
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1 Decree.

2 M. The United States does not admit any liability arising out of the transactions or
3 occurrences alleged in the counterclaims in the Sulphur Bank Site case or the Stibnite Mine Site
4 case, or in the complaint in intervention filed in the Elem Tribe CERCLA case.

5 N. The United States, the Elem Tribe, and the Settling Defendants (the “Parties”)
6 agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been
7 negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and
8 complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and
9 in the public interest.

10 NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby
11 ORDERED, ADJUDGED, AND DECREED:

12 II. JURISDICTION

13 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
14 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal
15 jurisdiction over Bradley Mining and Bradley Trust. Venue is proper in this District pursuant to
16 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) and (c). Settling Defendants consent to and shall
17 not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce
18 this Consent Decree.

19 III. PARTIES BOUND

20 2. This Consent Decree applies to and is binding upon the United States, the Elem
21 Tribe, and Settling Defendants and their respective successors and assigns. Any change in
22 ownership or corporate status of Bradley Mining or Bradley Trust including, but not limited to,
23 any transfer of assets or real or personal property, shall in no way alter that Defendant’s
24 responsibilities under this Consent Decree.

25 IV. DEFINITIONS

26 3. Unless otherwise expressly provided herein, terms used in this Consent Decree
27 that are defined in CERCLA or in regulations promulgated under CERCLA shall have the
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1 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are
2 used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the
3 following definitions shall apply:

4 “Assigned” or “Assignment” or “Assignments” shall mean Defendants’ transfer of fee
5 title of the Assigned Property to the Redevelopment Trust.

6 “Assigned Property” shall mean the property in Lake County, California that is owned
7 by: (i) Bradley Trust and designated by the following property description:

8 (a) Lake County Assessor Parcel Nos. 010-002-33, 010-002-39, 010-002-57, 010-002-58,
9 and 010-002-81; and

10 (b) Lake County Assessor Parcel Nos. 010-029-24, 010-029-25, 010-002-32, and 010-
11 002-83; or

12 (ii) Bradley Mining and designated by the following property description: Lake County
13 Assessor Parcel Nos. 010-002-29 and 010-002-30.

14 “BIA Road 120” shall mean the geographic area contained in the grant of easement for a
15 right-of-way for a road over, across, in and upon lands located in Lake County, California, as
16 shown and delineated in the Right of Way Plats, Drawing No. 17-7-46, dated July 1970, and
17 Drawing No. 17-7-48, dated August 3, 1970, which are attached hereto as Appendix D.

18 “BLM” shall mean the United States Department of the Interior Bureau of Land
19 Management and any successor departments, agencies, or instrumentalities of the United States.

20 “Bradley Mining” shall mean the Bradley Mining Company, a California corporation.

21 “Bradley Mining Settling Defendants” shall mean the Bradley Mining Company, its
22 officers, directors, shareholders, successors, and assigns.

23 “Bradley Trust” shall mean Frederick Bradley, in his representative capacity as Trustee
24 of the Worthen Bradley Family Trust.

25 “Bradley Trust Settling Defendants” shall mean Frederick Bradley, in his representative
26 capacity as Trustee of the Worthen Bradley Family Trust, his successors, and assigns, and any
27 named beneficiaries of the Bradley Trust as of May 6, 2009, and their successors and assigns.
28

1 “Bretz Mine Site” shall mean the formerly active mercury mine located in Malheur
2 County, Oregon, which includes Section 3, T.41 S., R.41 E., Willamette Meridian.

3 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and
4 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601- 9675.

5 “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto
6 (listed in Section XXII). In the event of conflict between this Decree and any appendix, this
7 Decree shall control.

8 “Covered Parcels” shall mean Parcels 24, 25, 29, 30, 32, 33, 39, 57, 58, 81, and 83, and
9 the Excised Lands when they are owned or controlled by the Redevelopment Trust.

10 “Covered Sites” shall mean the Sulphur Bank Site, the Mt. Diablo Mine Site, the Stibnite
11 Mine Site, the Springfield Mine Site, the IMA Mine Site, the Bretz Mine Site, and the Opalite
12 Mine Site. Appendix A contains maps that generally depict the Covered Sites.

13 “Day” shall mean a calendar day unless expressly stated to be a working day. “Working
14 day” shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any
15 period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday,
16 or federal holiday, the period shall run until the close of business of the next working day.

17 “Defendants” shall mean the Bradley Mining Company, a California corporation, and
18 Frederick Bradley, in his representative capacity as Trustee of the Worthen Bradley Family
19 Trust.

20 “DOI” shall mean the United States Department of the Interior and any successor
21 departments, agencies, or instrumentalities of the United States.

22 “DOJ” shall mean the United States Department of Justice and any successor
23 departments, agencies, or instrumentalities of the United States.

24 “Effective Date” shall mean the date upon which this Consent Decree is entered by the
25 Court.

26 “Elem Indian Colony” shall mean the geographic area contained in Lake County
27 Assessor Parcel No. 010-002-20.
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1 “Elem Tribe” shall mean the Elem Indian Colony of Pomo Indians, a federally
2 recognized Indian tribe.

3 “EPA” shall mean the United States Environmental Protection Agency and any successor
4 departments, agencies, or instrumentalities of the United States.

5 “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund
6 established by the Internal Revenue Code, 26 U.S.C. § 9507.

7 “Excised Lands” shall be those areas of Parcels 33 and 57 that are not transferred by the
8 Redevelopment Trust to the Elem Tribe due to the presence of hazardous substances as shown
9 and delineated generally in the map attached hereto as Appendix E, and subject to modification
10 based on the results of the environmental assessment to be performed under Paragraph 25 of this
11 Consent Decree.

12 “Existing Contamination” shall mean any Waste Materials at the Sulphur Bank Site as of
13 the Effective Date of this Consent Decree.

14 “Financial Information” shall mean those financial documents identified in Appendix C.

15 “Financial Security” shall mean the amount of financial assurances determined by EPA
16 to ensure protection of the response measures taken at Parcel 25, Parcel 29, Parcel 30, Parcel 32,
17 and the Excised Lands that will be required of the Redevelopment Trust if or when the
18 Redevelopment Trust seeks an exception to the land/water use restrictions for Parcel 25, Parcel
19 29, Parcel 30, Parcel 32, and the Excised Lands.

20 “Forest Service” shall mean the United States Department of Agriculture Forest Service
21 and any successor departments, agencies, or instrumentalities of the United States.

22 “IMA Mine Site” shall mean the formerly active tungsten mine located in Lemhi County,
23 Idaho, which includes Sections 13, 14, 15, 22, 23, 24, T.14 N., R.23 E., Boise Meridian.

24 “Institutional Controls” shall mean Proprietary Controls and state or local laws,
25 regulations, ordinances, zoning restrictions, or other governmental controls or notices that:

26 (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste
27 Materials at the Covered Sites; (b) limit land, water, and/or resource use to implement, ensure
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1 non-interference with, or ensure the protectiveness of the remedial action at the Covered Sites;
2 and/or (c) provide information intended to modify or guide human behavior at the Covered Sites.

3 “Insurance Proceeds” shall mean the total amount of all insurance proceeds received by
4 Bradley Mining in any settlements or paid by its insurers in the negotiations conducted pursuant
5 to Paragraph 9.

6 “Interest” shall mean interest at the rate specified for interest on investments of the EPA
7 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
8 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest
9 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change
10 on October 1 of each year.

11 “Mt. Diablo Mine Site,” also known as the Marsh Creek Road Abandoned Dump Site,
12 shall mean the formerly active Mt. Diablo mercury mine located in Contra Costa County at 2430
13 Morgan Territory Road in Clayton, California, including portions of Contra Costa County
14 Assessor’s Parcel Nos. 078-060-034, 078-070-034, and 078-070-036.

15 “Net Lease Proceeds” shall mean the total value of all consideration received by the
16 Redevelopment Trust from the lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised
17 Lands, less fees and expenses as set forth in the Redevelopment Trust Agreement.

18 “Net Sales Proceeds” shall mean the total value of all consideration received by the
19 Redevelopment Trust from the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands,
20 less fees and expenses as set forth in the Redevelopment Trust Agreement.

21 “Opalite Mine Site” shall mean the formerly active mercury mine located in Malheur
22 County, Oregon, which includes portions of Section 33, T.40 S., R.40 E., Willamette Meridian.

23 “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic
24 numeral.

25 “Parcel 24” shall mean Lake County Assessor Parcel No. 010-029-24.

26 “Parcel 25” shall mean Lake County Assessor Parcel No. 010-029-25.

27 “Parcel 28” shall mean Lake County Assessor Parcel No. 010-002-28.

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1 “Parcel 29” shall mean Lake County Assessor Parcel No. 010-002-29.

2 “Parcel 30” shall mean Lake County Assessor Parcel No. 010-002-30.

3 “Parcel 32” shall mean Lake County Assessor Parcel No. 010-002-32.

4 “Parcel 33” shall mean Lake County Assessor Parcel No. 010-002-33.

5 “Parcel 39” shall mean Lake County Assessor Parcel No. 010-002-39.

6 “Parcel 57” shall mean Lake County Assessor Parcel No. 010-002-57.

7 “Parcel 58” shall mean Lake County Assessor Parcel No. 010-002-58.

8 “Parcel 81” shall mean Lake County Assessor Parcel No. 010-002-81.

9 “Parcel 82” shall mean Lake County Assessor Parcel No. 010-002-82.

10 “Parcel 83” shall mean Lake County Assessor Parcel No. 010-002-83.

11 Appendix B contains a map generally depicting Parcels 24, 25, 28, 29, 30, 32, 33, 39, 57, 58, 81,
12 82, and 83 as they are currently configured.

13 “Parties” shall mean the United States, the Elem Tribe, and Settling Defendants.

14 “Plaintiff” shall mean the United States.

15 “Proprietary Controls” shall mean easements or covenants running with the land that
16 (a) limit land, water or resource use and/or provide access rights, and (b) are created pursuant to
17 common law or statutory law by an instrument that is recorded by the owner in the appropriate
18 land records office.

19 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 -
20 6992k (also known as the Resource Conservation and Recovery Act).

21 “Redevelopment Trust” shall mean the private trust, having the United States and the
22 Elem Tribe as its named beneficiaries, that will be established pursuant to Section VIII
23 (Redevelopment Trust; Defendants’ Assignment of Property) of this Decree for the ownership,
24 management or control of the Assigned Property.

25 “Response Action Systems” mean any and all equipment and systems located on the
26 Sulphur Bank Site as well as devices that may be installed in the future to carry out CERCLA
27 response actions on the Sulphur Bank Site, including, but not limited to, a water treatment plant,
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1 soil covers, cap systems, revegetated covers, surface water controls, groundwater interception
2 and diversion systems, groundwater monitoring wells, groundwater extraction wells, engineering
3 controls (including, but not limited to, fences and gates), and associated infrastructure such as
4 roadways, piping, power lines, and other utilities.

5 “Restricted Areas of Parcel 25” shall mean the contaminated portion of Parcel 25 as
6 generally depicted in Appendix I and as referenced in Paragraph 62.

7 “Restricted Areas of Parcel 32” shall mean the contaminated portion of Parcel 32 as
8 generally depicted in Appendix J and as referenced in Paragraph 62.

9 “Retained Lands” shall mean the property in Lake County, California that is owned by
10 Bradley Trust and designated by the following property description: Lake County Assessor
11 Parcel Nos. 010-002-28 and 010-002-82. The Retained Lands are not part of the Sulphur Bank
12 Site;

13 “Section” shall mean a portion of this Consent Decree identified by an upper case Roman
14 numeral.

15 “Settling Defendants” shall mean the Bradley Mining Settling Defendants and the
16 Bradley Trust Settling Defendants.

17 “Settling Federal Agencies” shall mean the United States Department of Agriculture, the
18 United States Department of Defense, the United States Department of the Interior, the United
19 States Environmental Protection Agency, and the United States General Services Administration,
20 which are resolving counterclaims that have been or could be asserted against them with regard
21 to the Sulphur Bank Site and/or the Stibnite Mine Site, and claims that have been or could be
22 asserted against them with regard to the Elem Tribe CERCLA case, as provided in this Consent
23 Decree, as well as any other department, agency, and instrumentality of the United States against
24 whom claims for cost recovery, natural resources damages, or contribution under CERCLA
25 could be asserted with regard to the Sulphur Bank Site and/or the Stibnite Mine Site.

26 “Springfield Mine Site” shall mean the Springfield Scheelite Mine Site located on the
27 Big Chief and Springfield Creeks in Valley County, Idaho, including portions of Section 28,
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1 T.17 N., R.9 E., Boise Meridian.

2 “Stibnite Mine Site” shall mean the Stibnite Mine Site in Valley County, Idaho, including
3 portions of Sections 2, 3, 10, 11, 14, 15, 16, 21, 22 & 27, T.18 N., R.9 E., Boise Meridian, and
4 Sections 34 & 35, T.19 N., R.9 E., Boise Meridian.

5 “Sulphur Bank Site” shall mean the Sulphur Bank Mercury Mine Superfund Site in Lake
6 County, California, which includes all or portions of Lake County Assessor’s Parcel Nos.
7 010-002-20 (the Elem Indian Colony), 010-029-25, 010-002-29, 010-002-30, 010-002-32,
8 010-002-33, 010-002-57, and 010-002-58, Clear Lake, and BIA Road 120.

9 “Total Income” shall mean Bradley Mining’s income as reported to the Internal Revenue
10 Service as Total Income on line 11 of its U.S. Corporation Income Tax Return, Internal Revenue
11 Service Form 1120 (2009 form), or the equivalent line of any future U.S. Corporation Income
12 Tax Return form. For purposes of this Consent Decree, Total Income for any year shall not
13 include payments of insurance proceeds pursuant to Paragraphs 8 and 9 of this Decree that were
14 received by Bradley Mining in that year.

15 “United States” shall mean the United States of America, including its departments,
16 agencies, and instrumentalities, which includes without limitation EPA, the Forest Service,
17 BLM, and the Settling Federal Agencies.

18 “Waste Materials” shall mean: (i) any “hazardous substance” under Section 101(14) of
19 CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of
20 CERCLA, 42 U.S.C. § 9601(33); (iii) any “solid waste” under Section 1004(27) of RCRA, 42
21 U.S.C. § 6903(27); and (iv) any “hazardous substance” under California Health and Safety Code
22 §§ 25316, 25317.

23 V. GENERAL PROVISIONS

24 4. Objectives of the Parties. By entering into this Consent Decree, the mutual
25 objectives of the Parties, as more precisely described in the terms of this Consent Decree, are:

26 a. To reach a settlement among the Parties with respect to the Covered Sites
27 that requires: (i) Bradley Mining to Assign certain parcels of property to the Redevelopment
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1 Trust for the benefit of the United States; (ii) Bradley Mining to make cash payments from the
2 proceeds of insurance claims and annual payments of a percentage of its Total Income to the
3 United States; (iii) Bradley Trust to Assign certain parcels of property to the Redevelopment
4 Trust for the benefit of the United States; and (iv) Bradley Trust to Assign certain parcels of
5 property to the Redevelopment Trust for the benefit of the Elem Tribe;

6 b. To resolve the claims of Plaintiff against Defendants for their alleged
7 liability for the Covered Sites, as provided in Section XI (Covenants by Plaintiff, Settling
8 Federal Agencies, and the Elem Tribe) and Section XII (Plaintiff's Reservation of Rights) of this
9 Decree;

10 c. To resolve any claims of the Elem Tribe that have been or could have
11 been asserted against the United States or the Settling Defendants with regard to the Sulphur
12 Bank Site, as provided in Section XI (Covenants by Plaintiff, Settling Federal Agencies, and the
13 Elem Tribe) of this Decree;

14 d. To resolve any claims of Settling Defendants that have been or could have
15 been asserted against the United States or the Elem Tribe with regard to the Covered Sites, as
16 provided in Section XIII (Covenants Not to Sue by Settling Defendants) of this Decree; and

17 e. To provide for contribution protection for the Bradley Mining Settling
18 Defendants, the Bradley Trust Settling Defendants, the Settling Federal Agencies, and the
19 Redevelopment Trust with respect to matters addressed in this Consent Decree pursuant to
20 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

21 5. Several Commitments by Bradley Mining, Bradley Trust, and DOI.

22 a. During any time after the Effective Date of this Consent Decree that a
23 Defendant owns or controls the Covered Sites or any portion thereof, that Defendant shall:

24 1. comply with any Institutional Controls set forth in any current or
25 future Record of Decision for the Covered Sites on its respective owned or controlled portion of
26 the Covered Sites; and

27 2. cooperate with EPA, the Forest Service, and BLM during the
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1 implementation of all or any portion of CERCLA response actions at the Covered Sites carried
2 out by, or under the oversight of, EPA, the Forest Service, and BLM.

3 b. DOI agrees to comply with substantive Institutional Controls and land-use
4 restrictions set forth in an EPA-issued Action Memorandum or Record of Decision for BIA Road
5 120, to the extent that such restrictions are consistent with the Federal Property and
6 Administrative Services Act of 1949, 40 U.S.C. § 471, and article IV of the U.S. Constitution.

7 VI. STIPULATED JUDGMENT

8 6. Bradley Mining stipulates that judgment shall be hereby entered against it and in
9 favor of Plaintiff in the amount of \$104,774,423 on the United States' claims under Section 107
10 of CERCLA, 42 U.S.C. § 9607, for recovery of response costs incurred or to be incurred by the
11 United States in connection with releases or threatened releases of hazardous substances at the
12 Covered Sites. Although Plaintiff may file this judgment as and where necessary to preserve
13 secured creditor status in favor of Plaintiff, Bradley Mining acknowledges that such filing is not
14 a condition precedent to Plaintiff's secured creditor status. This judgment shall remain in effect
15 until Bradley Mining has complied with all requirements in this Paragraph. Such judgment shall
16 be satisfied solely (i) through recovery of insurance proceeds from any insurance policies held
17 by Bradley Mining in accordance with Paragraphs 8 and 9, (ii) by Bradley Mining's annual
18 payments of a percentage of its Total Income in accordance with Paragraph 12, and (iii) by
19 Bradley Mining's conveyance to the Redevelopment Trust, in accordance with Paragraph 19, of
20 Parcels 29 and 30 and any other property rights it has with respect to Parcels 24, 25, 32, 33, 39,
21 57, 58, 81, and 83. Any cash payments made by Bradley Mining pursuant to this Consent
22 Decree and any payments of Net Sales Proceeds and Net Lease Proceeds by the Redevelopment
23 Trust shall, in the aggregate, not exceed the judgment amount. Upon approval and entry, this
24 Consent Decree shall constitute the final judgment for resolution of the United States' claims
25 against Bradley Mining, and no other form of judgment shall be required.

26 VII. PAYMENTS BY DEFENDANTS AND SETTLING FEDERAL AGENCIES

27 7. Payments to Elem Tribe. As additional consideration for the Elem Tribe's
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1 Covenant Not to Sue in favor of the Settling Defendants as set forth in Paragraph 43 of the
2 Consent Decree, and conditioned upon the Court's entry of the Consent Decree, Bradley Mining
3 and Bradley Trust shall pay a total of fifty thousand dollars (\$50,000) to the Elem Tribe as
4 reimbursement of the Elem Tribe's assessment and restoration costs related to Parcels 33, 39, 57,
5 58, and 81 as follows:

6 a. After the Effective Date of this Consent Decree and within two weeks
7 after Bradley Mining receives any settlement payment from Century Indemnity for the Covered
8 Sites, as described in Paragraph 8 below, Bradley Mining shall pay \$25,000 of the \$50,000
9 additional consideration described in this Paragraph to the Elem Tribe. The Parties to this
10 Consent Decree recognize and acknowledge that the payment obligations of Bradley Mining
11 relating to insurance recoveries under this Consent Decree can only be paid if the insurance
12 companies actually make the payments; and

13 b. No later than one year after the Effective Date of the Consent Decree or
14 within two weeks after Bradley Trust receives payment for its sale of either or both of the
15 Retained Lands, whichever comes first, Bradley Trust shall pay the remaining \$25,000 of the
16 \$50,000 additional consideration described in this Paragraph to the Elem Tribe in full
17 satisfaction of the obligation of Bradley Mining and Bradley Trust to pay the additional
18 consideration amount. In the event that Bradley Mining does not make the initial \$25,000
19 payment because the insurance payment is not received as anticipated in subparagraph a., then
20 Bradley Trust or Bradley Mining shall pay the entire \$50,000 to the Elem Tribe no later than one
21 year after the Effective Date of the Consent Decree or within two weeks after Bradley Trust
22 receives payment for its sale of either or both of the Retained Lands, whichever comes first.

23 c. Payments by Defendants to the Elem Tribe as described in this Paragraph
24 shall be made according to written instructions that the Elem Tribe will provide to Bradley
25 Mining and Bradley Trust within one week after the Effective Date of this Consent Decree.

26 d. To insure the payment of such additional consideration described in
27 Paragraph 7.a. and b., Bradley Mining and Bradley Trust consent to the Elem Tribe placing a
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1 lien, which shall be in the form attached to this Consent Decree as Appendix K, onto the title of
2 the Retained Lands for the remaining amount outstanding, if any. If the Elem Tribe does place
3 such a lien onto the title of the Retained Lands as provided herein, the Elem Tribe agrees to
4 unconditionally release that lien within one week of the payment of the additional consideration.
5 In the event that Bradley Trust and Bradley Mining do not pay all of the additional consideration
6 described in Paragraph 7, the Elem Tribe shall be entitled to recover Interest on any unpaid
7 amount and its reasonable attorneys fees incurred in executing against the lien to recover such
8 unpaid amount; provided, however, that if the additional consideration is paid as described in
9 Paragraph 7, and the Elem Tribe does not release any lien it placed onto the Retained Lands,
10 then Bradley Trust and Bradley Mining shall be entitled to recover their reasonable attorneys
11 fees incurred relating to removal of the lien.

12 8. Settled Insurance Claim. Within 10 days after the lodging of this Consent Decree,
13 Bradley Mining shall deposit \$530,000, which are the proceeds from a settlement payment
14 received from Century Indemnity for the Covered Sites, into an escrow account, bearing interest
15 on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). The
16 monies placed in escrow, together with accrued interest thereon, shall be returned to Bradley
17 Mining if either: (i) the United States does not move to enter the Consent Decree after review of
18 public comments; or (ii) the United States moves to enter the Consent Decree and the Decree is
19 not entered by the Court, and (a) the time for any appeal of that decision has run or (b) the
20 Court's denial of entry is upheld on appeal. If the Consent Decree is entered by the Court,
21 Bradley Mining shall: (1) be entitled to receive and retain \$25,000 of the insurance proceeds in
22 the Escrow Account to transfer to the Elem Tribe; (2) within 15 days after the Effective Date of
23 this Consent Decree, cause the monies in the Escrow Account, minus the \$25,000 to be retained
24 by Bradley Mining and \$126,250 plus accrued interest to be paid to the Redevelopment Trust, to
25 be paid to the United States in accordance with Paragraphs 11 and 13 below; and (3) within 30
26 days after the Effective Date of this Consent Decree, cause the remaining monies in the Escrow
27 Account (\$126,250 plus accrued interest) to be paid to the Redevelopment Trust in accordance
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1 with Paragraph 19. The Parties to this Consent Decree recognize and acknowledge that the
2 payment obligations of Bradley Mining relating to insurance recoveries under this Consent
3 Decree can only be paid if the insurance companies actually make the payments.

4 9. Other Insurance Claims. To satisfy the foregoing judgment in Paragraph 6,
5 Bradley Mining agrees, pursuant to this Paragraph, to pursue in good faith and to final judgment
6 or settlement any available indemnification or recovery from all applicable insurance policies
7 held by Bradley Mining relating to the Covered Sites. Bradley Mining agrees to reasonably
8 cooperate with and assist the United States in (i) asserting and pursuing claims for coverage
9 under those policies, and (ii) negotiating or litigating the most favorable resolution of those
10 claims under those policies. The United States will provide assistance with respect to
11 negotiations with Bradley Mining's insurers by providing documentation of response costs
12 incurred in connection with the Covered Sites and assisting in responses to other information
13 requests from the insurers. All insurance proceeds recovered by Bradley Mining by negotiation,
14 litigation or payment by its insurers pursuant to this Paragraph shall constitute "Insurance
15 Proceeds" and shall be allocated in the appropriate percentages set forth in Paragraph 10.

16 10. Eighty percent of the first one hundred thousand dollars (\$100,000) of any
17 Insurance Proceeds received by Bradley Mining from its insurance policies pursuant to
18 Paragraph 9 shall be paid to the United States and the remaining twenty percent shall be paid to
19 Bradley Mining. For any Insurance Proceeds received by Bradley Mining from its insurance
20 policies pursuant to Paragraph 9 in excess of \$100,000, the United States shall be paid ninety-
21 five percent and the remaining five percent shall be paid to Bradley Mining. Bradley Mining
22 shall request its insurers to have all Insurance Proceeds paid into an Escrow Account, bearing
23 interest on commercially reasonable terms, in a federally-chartered bank. Within 30 Days of
24 Insurance Proceeds under Paragraph 9 becoming available, Bradley Mining shall cause the
25 monies in the Escrow Account, including the accrued interest, to be paid in the appropriate
26 percentages set forth in this Paragraph to: (i) the United States, in accordance with the
27 procedures specified below in Paragraphs 11 and 13, and (ii) Bradley Mining. If it is not
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1 practicable for the insurers to pay an Escrow Account directly, then Bradley Mining, in
2 accordance with the procedures specified below in Paragraphs 11 and 13, shall forward the
3 United States' share to the United States within thirty days of receiving the Insurance Proceeds.
4 The Parties to this Consent Decree recognize and acknowledge that the payment obligations of
5 Bradley Mining relating to insurance recoveries under this Consent Decree can only be paid if
6 the insurance companies actually make the payments.

7 11. Payment to the United States pursuant to Paragraphs 8 and 10, whether by
8 Bradley Mining, its insurers, or an escrow agent, shall be made by FedWire Electronic Funds
9 Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT
10 procedures, referencing DOJ Case Numbers 90-11-3-07593 and 90-11-3-06069/4. Payment
11 shall be made in accordance with instructions provided to Bradley Mining by the Financial
12 Litigation Unit of the U.S. Attorney's Office in the Northern District of California following
13 lodging of the Consent Decree. After payment to the United States pursuant to Paragraph 8, the
14 U.S. Department of Justice shall distribute an allocated share of such proceeds as follows:
15 \$50,500 shall reference the Mt. Diablo Mine Site Special Account (Marsh Creek Road
16 Abandoned Dump Site, Site ID 09RX), \$74,588 shall reference the EPA Hazardous Substance
17 Superfund (13.4 percent of Stibnite Mine Site, Site ID 10Q7, Opalite Mine Site, and 14.2 percent
18 of Bretz Mine Site), \$159,833 shall reference Forest Service Region 4, Bradley Mining
19 settlement, Attn: K. Zamba (86.6 percent of Stibnite Mine Site and Springfield Mine Site), and
20 \$93,829 shall reference the DOI Central Hazardous Materials Fund, ALC 14010001, Account
21 Number 14X1121 (CHF) (to BLM for IMA Mine Site and 85.8 percent of Bretz Mine Site).
22 After payment to the United States pursuant to Paragraph 10, the U.S. Department of Justice
23 shall distribute an allocated share of such proceeds as follows: 25 percent shall reference
24 Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site), 10
25 percent shall reference shall reference the Mt. Diablo Mine Site Special Account (Marsh Creek
26 Road Abandoned Dump Site, Site ID 09RX), 14.77 percent shall reference the EPA Hazardous
27 Substance Superfund (13.4 percent of Stibnite Mine Site, Site ID 10Q7, Opalite Mine Site, and
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1 14.2 percent of Bretz Mine Site), 31.65 percent plus any accrued interest shall reference Forest
 2 Service Region 4, Bradley Mining settlement, Attn: K. Zamba (86.6 percent of Stibnite Mine
 3 Site and Springfield Mine Site), and 18.58 percent shall reference the DOI Central Hazardous
 4 Materials Fund, ALC 14010001, Account Number 14X1121 (CHF) (to BLM for IMA Mine Site
 5 and 85.8 percent of Bretz Mine Site).

6 12. Annual Payment of Percentage of Total Income. In addition to the payments
 7 required by Paragraphs 8 and 10, Bradley Mining shall, on an annual basis beginning with the
 8 Total Income in calendar year 2011, pay the United States an amount equal to a fixed percent of
 9 Bradley Mining's Total Income. Bradley Mining shall calculate its annual payment based on the
 10 amount of its Total Income, as provided in the following table:

<u>Bradley Mining's Total Income</u>	<u>Annual Payment to United States</u>
0 - \$100,000	8.5 percent of that amount
\$100,001 - \$200,000	25 percent of that amount
over \$200,000	60 percent of that amount

15 Thus, for example, if Bradley Mining reports Total Income of \$300,000, it shall pay the United
 16 States \$93,500 as follows: 8.5 percent of the first \$100,000 (\$8,500), plus 25 percent of the next
 17 \$100,00 (\$25,000), and 60 percent of the amount over \$200,000 (\$60,000). Bradley Mining
 18 shall make each annual payment no later than 30 business days after it is required to file its
 19 annual federal tax return, and shall concurrently provide a copy of its filed tax return to the
 20 United States, EPA Region IX, and EPA Region X as provided in Section XIX (Notices and
 21 Submissions) of this Decree. Bradley Mining's annual payment pursuant to this Paragraph shall
 22 be made by EFT to the U.S. Department of Justice account in accordance with current EFT
 23 procedures, referencing DOJ Case Numbers 90-11-3-07593 and 90-11-3-06069/4. Payment
 24 shall be made in accordance with instructions provided to Bradley Mining by the Financial
 25 Litigation Unit of the U.S. Attorney's Office in the Northern District of California following
 26 lodging of the Consent Decree. The U.S. Department of Justice shall distribute an allocated
 27 share as follows: 25 percent shall reference Site/Spill Special Account Number 2009 TR2B
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1 09K0XK2 302DD2 (Sulphur Bank Site), 10 percent shall reference the Mt. Diablo Mine Site
2 Special Account (Marsh Creek Road Abandoned Dump Site, Site ID 09RX), 14.77 percent shall
3 reference the EPA Hazardous Substance Superfund (13.4 percent of Stibnite Mine Site, Site ID
4 10Q7, Opalite Mine Site, and 14.2 percent of Bretz Mine Site), 31.65 percent shall reference
5 Forest Service Region 4, Bradley Mining settlement, Attn: K. Zamba (86.6 percent of Stibnite
6 Mine Site and Springfield Mine Site), and 18.58 percent shall reference the DOI Central
7 Hazardous Materials Fund, ALC 14010001, Account Number 14X1121 (CHF) (to BLM for IMA
8 Mine Site and 85.8 percent of Bretz Mine Site).

9 13. At the time of payment under Paragraphs 11 and 12, Defendants shall send a letter
10 confirming the date and reference number of the FedWire EFT to the United States, EPA Region
11 IX, EPA Region X, the Regional Financial Management Officers, the Forest Service, and BLM,
12 as provided in Section XIX (Notices and Submissions) of this Decree.

13 14. Special Accounts and EPA Hazardous Substance Superfund.

14 a. For the Sulphur Bank Site, the total amount to be paid to EPA pursuant to
15 Paragraphs 11 and 12 of this Consent Decree shall be deposited by EPA into the Site/Spill
16 Special Account Number 2009 TR2B 09K0XK2 302DD2 within the EPA Hazardous Substance
17 Superfund to be retained and used to conduct or finance response actions at or in connection with
18 the Sulphur Bank Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

19 b. For the Mt. Diablo Mine Site, the total amount to be paid to EPA pursuant
20 to Paragraphs 11 and 12 of this Consent Decree shall be deposited by EPA into the Mt. Diablo
21 Mine Site Special Account (Marsh Creek Road Abandoned Dump Site, Site ID 09RX) within the
22 EPA Hazardous Substance Superfund to be retained and used to conduct or finance response
23 actions at or in connection with the Mt. Diablo Mine Site, or to be transferred by EPA to the
24 EPA Hazardous Substance Superfund.

25 c. For the Stibnite Mine Site (Site ID 10Q7), Opalite Mine Site, and the
26 Bretz Mine Site, the total amount to be paid to EPA pursuant to Paragraphs 11 and 12 of this
27 Consent Decree shall be deposited by EPA into the EPA Hazardous Substance Superfund.
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1 d. For the Stibnite Mine Site and the Springfield Mine Site, the total amount
2 to be paid to the Forest Service pursuant to Paragraphs 11 and 12 of this Consent Decree shall be
3 deposited into the Forest Service Region 4, Bradley Mining settlement account (Attn: K.
4 Zamba).

5 e. For the IMA Mine Site and Bretz Mine Site, the total amount to be paid to
6 BLM pursuant to Paragraphs 11 and 12 of this Consent Decree shall be deposited in the DOI
7 Central Hazardous Materials Fund, ALC 14010001, Account Number 14X1121 (CHF),
8 NBC/Division of Financial Management Services, Branch of Accounting Operations, Mail Stop
9 D-2777, 7401 West Mansfield Avenue, Lakewood, Colorado 80235.

10 15. As soon as reasonably practicable after the Effective Date of this Consent Decree,
11 and consistent with Paragraph 15.b., the United States, on behalf of the Settling Federal
12 Agencies, shall:

13 a. Pay \$7,200,588 to EPA. The total amount to be paid by the United States
14 on behalf of the Settling Federal Agencies shall be deposited into the Site/Spill Special Account
15 Number 2009 TR2B 09K0XK2 302DD2 within the EPA Hazardous Substance Superfund to be
16 retained and used to conduct or finance response actions at or in connection with the Sulphur
17 Bank Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. At the time
18 of payment, the United States, on behalf of the Settling Federal Agencies, shall send a letter
19 confirming the date and reference number of the payment to the United States, EPA Region IX,
20 and the Regional Financial Management Officers as provided in Section XIX (Notices and
21 Submissions) of this Decree, and shall reference DOJ Case Number 90-11-3-07593 and
22 Site/Spill Special Account Number 2009 TR2B 09K0XK2 302DD2.

23 b. If the payment to EPA required by Paragraph 15.a. is not made as soon as
24 reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating
25 to payment to the appropriate DOJ Assistant Chief for the Environmental Defense Section. In
26 any event, if this payment is not made within 120 days after the date of the Effective Date of this
27 Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance
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1 with a letter agreement dated December 28, 1998.

2 16. The Parties to this Consent Decree recognize and acknowledge that the payment
3 obligations of the Settling Federal Agencies under this Consent Decree can only be paid from
4 appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be
5 interpreted or construed as a commitment or requirement that any Settling Federal Agency
6 obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any
7 other applicable provision of law.

8 **VIII. REDEVELOPMENT TRUST; DEFENDANTS' ASSIGNMENT OF PROPERTY**

9 17. The Redevelopment Trust shall be established in accordance with this Section
10 VIII. The purpose of the Redevelopment Trust is to act for the benefit of the United States and
11 the Elem Tribe by: (i) receiving and holding title to Parcels 24, 25, 29, 30, 32, and 83, and the
12 Excised Lands, with the primary objective of managing the parcels consistent with EPA's long-
13 term remedial objectives for the Sulphur Bank Site and, after consulting with EPA and in
14 accordance with EPA's written instructions, to take further actions regarding all or a portion of
15 the parcels, such as, but not limited to, selling, leasing, developing, transferring or holding in
16 trust for a new beneficiary in accordance with the requirements of this Consent Decree;
17 (ii) receiving and holding title to Parcels 33, 39, 57, 58, and 81 until the parcels are transferred in
18 fee to the Elem Tribe without the Excised Lands; (iii) cooperating fully with EPA in the
19 implementation of response actions at the Sulphur Bank Site and not interfering with such
20 response actions, and providing access to the Sulphur Bank Site as set forth in Section XV
21 (Access and Institutional Controls) of the Consent Decree; (iv) subject to EPA's approval,
22 marketing Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, for sale, lease, and
23 redevelopment; (v) subject to EPA's approval, maximizing the proceeds of the sale of Parcels
24 24, 25, 29, 30, 32, and 83, and the Excised Lands; (vi) disbursing the Net Sale Proceeds and Net
25 Lease Proceeds from Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, and assets of the
26 Redevelopment Trust in accordance with applicable provisions of this Consent Decree and the
27 Redevelopment Trust Agreement; and (vii) providing annual accounting to EPA Region IX until
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1 Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands are sold and thereafter providing a final
2 accounting to EPA Region IX of all earnings, income, and disbursements from the estate of the
3 Redevelopment Trust. Defendants shall cooperate fully in the establishment of the
4 Redevelopment Trust, and provide such information as the Trustee may reasonably require, such
5 as for tax accounting, to carry out the obligations of the Redevelopment Trust.

6 18. Within 15 Days after the Effective Date of this Consent Decree, Defendants shall
7 submit to EPA a fully executed Redevelopment Trust Agreement, which shall be in the form
8 attached to this Consent Decree as Appendix F. If EPA determines that the Redevelopment
9 Trust Agreement needs to be amended to conform to the requirements of this Consent Decree or
10 to effectuate the purposes of the Trust, Defendants shall cooperate fully in the amendment of the
11 Redevelopment Trust Agreement and their agreement to amend the Agreement shall not be
12 unreasonably withheld. As to Parcels 33, 39, 57, 58, and 81, however, the Redevelopment Trust
13 may be modified to effectuate the purposes of the Trust only by joint written consent of EPA and
14 the Elem Tribe and by Order of this Court, and only to the extent that such modification does not
15 change or inhibit the purpose of the Redevelopment Trust respecting these Parcels or allow for
16 distributions of these Parcels to any entity that is not a qualified organization under the terms of
17 the Redevelopment Trust.

18 19. Within 30 Days after the Effective Date of this Consent Decree, (i) Bradley
19 Mining shall convey to the Redevelopment Trust Parcels 29 and 30 free and clear of any
20 encumbrances (including, but not limited to, leases or other agreements related to tenancy) other
21 than those identified in Appendix H; (ii) Bradley Mining shall convey to the Redevelopment
22 Trust any other property rights it has with respect to Parcels 24, 25, 32, 33, 39, 57, 58, 81, and
23 83; (iii) Bradley Trust shall convey to the Redevelopment Trust Parcels 24, 25, 32, 33, 39, 57,
24 58, 81, and 83 free and clear of any encumbrances (including, but not limited to, leases or other
25 agreements related to tenancy) other than those identified in Appendix H; and (iv) subject to
26 recovery from its insurer pursuant to Paragraph 8, Bradley Mining shall pay \$126,250 plus
27 accrued interest, if any, to the Redevelopment Trust for the payment of expenses associated with
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1 both the ownership, marketing, and sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised
2 Lands, and the ownership of Parcels 33, 39, 57, 58, and 81 until they are transferred to the Elem
3 Tribe. Defendants shall have no further obligations or liabilities regarding Parcels 24, 25, 29, 30,
4 32, 33, 39, 57, 58, 81, and 83.

5 20. The money paid into the Redevelopment Trust, and all earnings thereon, shall be
6 used solely for the purposes provided in this Consent Decree including, without limitation,
7 paying the expenses of administering the trust and maximizing the net proceeds of the sale or
8 lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, with any unused funds, less
9 the Trustee's fees, returned to the United States following the sale and conveyance of Parcels 24,
10 25, 29, 30, 32, and 83, and the Excised Lands.

11 21. Assignment of Property.

12 a. Each Assigned Property, as defined in this Consent Decree, shall be
13 Assigned:

14 1. in fee simple title with all associated surface and mineral rights of
15 the Assigned Property;

16 2. via a grant deed in substantially the form attached hereto as
17 Appendix G that is enforceable under the laws of the State of California;

18 3. free of all existing third party agreements, licenses, easements,
19 leases or similar instruments other than those identified in Appendix H; and

20 4. preceded by a current title insurance commitment or some other
21 evidence of title acceptable to the United States and the Elem Tribe, which shows title to the
22 Assigned Property to be free and clear of all prior liens and encumbrances (except when those
23 liens or encumbrances are approved by the United States and the Elem Tribe).

24 b. The United States will pay the cost of any title reports and title insurance
25 for the Assigned Property.

26 c. Until Assignment of their property pursuant to this Section VIII, each
27 Defendant, for its respectively owned properties:

1 1. shall be solely responsible for paying any and all associated taxes,
2 including, but not limited to, real property taxes and real estate transfer taxes;

3 2. shall keep the property insured against loss from casualty and
4 liability;

5 3. shall refrain from any act(s) that would defeat, diminish, or
6 otherwise impair the Redevelopment Trust's or the Elem Tribe's future interest(s) in fee title to
7 the property; and

8 4. shall cooperate with EPA with regard to cleanup actions and all
9 Institutional Controls on the property.

10 22. The Redevelopment Trust shall have the following obligations:

11 a. To receive, hold, manage, and maintain Parcels 24, 25, 29, 30, 32, and 83,
12 and the Excised Lands, with the primary objective of managing the parcels consistent with
13 EPA's long-term remedial objectives for the Sulphur Bank Site and, after consulting with EPA
14 and in accordance with EPA's written instructions, to take further actions regarding all or a
15 portion of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, such as, but not limited to,
16 selling, leasing, developing, transferring or holding in trust for a new beneficiary in accordance
17 with the requirements of this Consent Decree;

18 b. To receive, hold, manage, and maintain Parcels 33 and 57 until: (i) the
19 Excised Lands are appended to Parcels 29 and 30; and (ii) the Redevelopment Trust is instructed
20 in writing by the Elem Tribe to transfer the newly reconfigured Parcels 33 and 57 to the Elem
21 Tribe or to another trust or entity identified by the Elem Tribe; provided, however, that the Elem
22 Tribe will use its best efforts to accomplish transfers of Parcels 33 and 57 from the
23 Redevelopment Trust to the Elem Tribe or to another trust or entity identified by the Elem Tribe
24 by no later than one year after the Effective Date of this Consent Decree, unless the United
25 States and the Elem Tribe mutually agree to extend this period;

26 c. To receive, hold, manage, and maintain Parcels 39, 58, and 81 until the
27 Redevelopment Trust is instructed in writing by the Elem Tribe to transfer Parcels 39, 58, and 81
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1 to the Elem Tribe or to another trust or entity identified by the Elem Tribe; provided, however,
2 that the Elem Tribe will use its best efforts to accomplish transfers of Parcels 39, 58, and 81 from
3 the Redevelopment Trust to the Elem Tribe or to another trust or entity identified by the Elem
4 Tribe by no later than one year after the Effective Date of this Consent Decree, unless the United
5 States and the Elem Tribe mutually agree to extend this period;

6 d. To exercise due care at Parcels 25, 29, 30, and 32, including the Excised
7 Lands, with respect to Existing Contamination, to comply with all applicable local, State, and
8 federal law and regulations, to cooperate fully with EPA in the implementation of response
9 actions at the Sulphur Bank Site and not interfere with such response actions, to comply with all
10 restrictions required by EPA, to record any Proprietary Controls at the request and direction of
11 EPA prior to transferring any of these parcels, and to provide access to the parcels as set forth in
12 Section XV (Access and Institutional Controls) of this Decree;

13 e. To deposit, manage, and invest the funds paid into the Redevelopment
14 Trust, and to disburse funds from such account(s) for the purposes set forth in this Consent
15 Decree;

16 f. To pay all applicable real estate and transfer taxes on the Covered Parcels,
17 file all applicable federal and state tax returns, and pay all applicable federal and state taxes
18 associated with the Trust and the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised
19 Lands;

20 g. Subject to EPA's approval, to locate purchasers or lessees who will
21 provide maximum value for, and will substantially reuse Parcels 24, 25, 29, 30, 32, and 83, and
22 the Excised Lands, consistent with applicable zoning and other valid land use ordinance and
23 regulations, to negotiate the terms of the sale and transfer or lease of the parcels, and to sell and
24 convey or lease the parcels;

25 h. Subject to EPA's approval, to retain a commercial real estate broker on
26 customary and reasonable terms to assist in the marketing and sale or lease of Parcels 24, 25, 29,
27 30, 32, and 83, and the Excised Lands;

1 i. Consistent with the fundamental purposes of the Redevelopment Trust as
2 set forth above in subparagraph a. and other applicable requirements of the Consent Decree, and
3 subject to the approval of EPA, to take whatever actions at whatever times are commercially
4 reasonable to maximize the net proceeds of the sale or lease of Parcels 24, 25, 29, 30, 32, and 83,
5 and the Excised Lands;

6 j. To distribute the assets of the Redevelopment Trust following the sale or
7 lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, in accordance with Paragraph
8 23;

9 k. To provide EPA Region IX an accounting on an annual basis, and a final
10 accounting within 30 days after the sale or conveyance of Parcels 24, 25, 29, 30, 32, and 83, and
11 the Excised Lands, of all Redevelopment Trust assets, earnings, and disbursements;

12 l. To employ all reasonable measures to prevent unauthorized entry upon or
13 use of the property in its possession or control and to provide for site maintenance and utilities, if
14 any;

15 m. To insure the Redevelopment Trust's property against loss due to casualty
16 or third party liability; and

17 n. To comply with all relevant Sections of the Consent Decree, and EPA
18 shall have the right and power to compel the Redevelopment Trust to so comply.

19 23. In accordance with the provisions of the Redevelopment Trust Agreement,
20 (i) within 15 Days after the closing of the sale of any of Parcels 24, 25, 29, 30, 32, and 83, and
21 the Excised Lands, the Redevelopment Trust shall retain 10 percent of the Net Sales Proceeds to
22 be used solely for the purposes provided in this Consent Decree, and shall thereafter distribute
23 the remainder of the Net Sale Proceeds from the sale to EPA's Site/Spill Special Account
24 Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct
25 or finance response actions at or in connection with the Sulphur Bank Site, or transferred by
26 EPA to the Hazardous Substance Superfund; and (ii) within 15 Days after the annual accounting
27 pursuant to the Redevelopment Trust Agreement, if Parcels 24, 25, 29, 30, 32, and 83, and the
28

1 Excised Lands, have been leased in the previous year, the Redevelopment Trust shall retain 10
2 percent of the Net Lease Proceeds to be used solely for the purposes provided in this Consent
3 Decree, and shall thereafter distribute the remainder of the Net Lease Proceeds from the lease of
4 Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, to EPA's Site/Spill Special Account
5 Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct
6 or finance response actions at or in connection with the Sulphur Bank Site, or transferred by
7 EPA to the Hazardous Substance Superfund. Upon the sale of all of the Parcels (Parcels 24, 25,
8 29, 30, 32, and 83, and the Excised Lands), the Redevelopment Trust shall distribute the Trust
9 fund balance (e.g., money paid by Defendants into the Redevelopment Trust, money retained
10 from Net Sales Proceeds and Net Lease Proceeds, any funds paid by any other person or entity,
11 and all earnings thereon), if any, less the fee of the Trustee of the Redevelopment Trust and any
12 other expenses of administering the Redevelopment Trust, to EPA's Site/Spill Special Account
13 Number 2009 TR2B 09K0XK2 302DD2 (Sulphur Bank Site) to be retained and used to conduct
14 or finance response actions at or in connection with the Sulphur Bank Site, or transferred by
15 EPA to the Hazardous Substance Superfund.

16 24. The Trustee of the Redevelopment Trust shall be compensated in accordance with
17 the schedule attached to the Redevelopment Trust Agreement.

18 25. Phase I/II Environmental Site Assessment.

19 a. After the Defendants have transferred Parcels 33, 57, and 58 to the
20 Redevelopment Trust, the Elem Tribe shall submit to BIA a final Scope of Work prepared by
21 McGinnis and Associates LLC, 265 Rose Mist, Reno, Nevada 89521, or another qualified
22 contractor subject to BIA's approval ("the approved Environmental Site Assessment ("ESA")
23 contractor"), for performance of a Phase I/II Environmental Site Assessment for Parcels 33, 57,
24 and 58, to be performed in accordance with the ASTM Standard Practice for Environmental Site
25 Assessments: Phase I Environmental Site Assessment Process, E 1527-05 (2005), and the
26 ASTM Standard Guide for Environmental Site Assessments: Phase II Environmental Site
27 Assessment Process, E 1903 - 97 (2002).

1 b. Upon receipt of the Scope of Work, BIA shall forward a contract to the
2 approved ESA contractor for execution, and performance by the approved ESA contractor shall
3 commence upon contract execution. The contract shall provide that the BIA will transfer
4 appropriated funds in an amount up to \$50,000 to the approved ESA contractor for the purpose
5 of conducting the Phase I/II Environmental Site Assessment, as described in the submitted Scope
6 of Work. The approved ESA contractor shall submit invoices to BIA pursuant to the contract
7 terms for purposes of payment. Payment of appropriated funds shall be subject to completion
8 and delivery of a Phase I/II Environmental Site Assessment for Parcels 33, 57, and 58 to BIA,
9 EPA Region IX, and the Elem Tribe.

10 c. The Elem Tribe acknowledges that the payment obligations of BIA under
11 this Consent Decree can only be paid from appropriated funds legally available for such purpose.
12 Nothing in this Paragraph shall be interpreted or construed as a commitment or requirement that
13 BIA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any
14 other applicable provision of law.

15 26. First Right of Refusal for BIA Road 120. If the United States determines that
16 BIA Road 120 is no longer needed by BIA, consistent with the Federal Property Management
17 Regulations at 41 C.F.R. § 102-75-936, the United States may release its perpetual easement and
18 right-of-way for BIA Road 120 to the Elem Tribe, provided that the Elem Tribe assumes any
19 ongoing operating and maintenance obligations, including those relating to any response action
20 taken by EPA on BIA Road 120.

21 IX. FAILURE TO COMPLY WITH CONSENT DECREE REQUIREMENTS

22 27. Interest on Late Payments. If Bradley Mining fails to make any payment under
23 Paragraphs 8, 10, and 12 by the required due date, Interest shall continue to accrue on the unpaid
24 balance through the date of payment. Bradley Mining shall make all payments required by this
25 Paragraph in the manner described in Paragraphs 11 and 13 unless otherwise directed in writing
26 by EPA.

27 28. Stipulated Penalty.
28

1 a. In addition to the Interest required by Paragraph 27 (Interest on Late
2 Payments), if Bradley Mining fails to remit the payments required by Paragraphs 8, 10, and 12
3 when due, then Bradley Mining also shall pay stipulated penalties to the United States per day
4 for each day that the payment is late as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th Day
\$250	15th through 30th Day
\$500	31st Day and beyond

5
6
7
8
9 b. Stipulated penalties are due and payable to the United States within 30
10 days of the date of the demand for payment of the penalties by the United States. All payments
11 to the United States under this Paragraph shall be identified as “stipulated penalties” and shall be
12 made by certified or cashier’s check made payable to “EPA Hazardous Substance Superfund.”
13 The check, or a letter accompanying the check, shall reference the name and address of the party
14 making payment, the Site name, Site/Spill Special Account Number 2009 TR2B 09K0XK2
15 302DD2, and DOJ Case Number 90-11-3-07593, and shall be sent to:

16 U.S. Environmental Protection Agency
17 Superfund Payments
18 Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

19 c. At the time of payment of any stipulated penalties to the United States,
20 Bradley Mining shall send copies of check(s), and any accompanying transmittal letter(s), to the
21 United States, EPA Region IX, EPA Region X, and the Regional Financial Management Officers
22 as provided in Section XIX (Notices and Submissions) of this Decree.

23 d. Penalties shall accrue as provided in this Paragraph regardless of whether
24 EPA has notified Bradley Mining of the violation or made a demand for payment, but need only
25 be paid upon demand. All penalties shall begin to accrue on the day after payment is due and
26 shall continue to accrue through the date of payment. Nothing herein shall prevent the
27 simultaneous accrual of separate penalties for separate violations of this Consent Decree.
28

1 29. If the United States brings an action to enforce this Consent Decree, Defendants
2 shall reimburse the United States for all costs of such action, including, but not limited to, costs
3 of attorney time.

4 30. Payments made under this Section shall be in addition to any other remedies or
5 sanctions available to Plaintiff by virtue of Defendants' failure to comply with the requirements
6 of this Consent Decree.

7 31. Notwithstanding any other provision of this Section, the United States may, in its
8 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
9 accrued to the United States pursuant to this Consent Decree. Payment of stipulated penalties
10 shall not excuse Bradley Mining from the payment obligation as required by Section VII
11 (Payments by Defendants and Settling Federal Agencies) or from performance of any other
12 requirements of this Consent Decree.

13 X. DISPUTE RESOLUTION

14 32. Unless otherwise expressly provided for in this Consent Decree, the dispute
15 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes
16 arising under or with respect to this Consent Decree. However, the procedures set forth in this
17 Section shall not apply to actions by the United States to enforce obligations of the Settling
18 Defendants that have not been disputed in accordance with this Section. Nothing in this Consent
19 Decree shall be construed to allow any dispute relating to one of the Covered Sites by Settling
20 Defendants regarding the validity of the provisions of any Record of Decision.

21 33. Any dispute which arises under or with respect to this Consent Decree shall in the
22 first instance be the subject of informal negotiations between the parties to the dispute. The
23 period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless
24 it is modified by written agreement of the parties to the dispute. The dispute shall be considered
25 to have arisen when one party sends the other parties a written Notice of Dispute.

26 34. Statements of Position.

27 a. In the event that the parties cannot resolve a dispute by informal
28

1 negotiations under the preceding Paragraph, then the position advanced by EPA or, in a dispute
2 relating to the Stibnite Mine Site, by the Forest Service,^{1/} shall be considered binding unless,
3 within 30 days after the conclusion of the informal negotiation period, a Defendant invokes the
4 formal dispute resolution procedures of this Section by serving on the United States a written
5 Statement of Position on the matter in dispute, including, but not limited to, any factual data,
6 analysis or opinion supporting that position and any supporting documentation relied upon by
7 the Defendant.

8 b. Within 30 days after receipt of a Defendant's Statement of Position, the
9 Government will serve on the Defendant its Statement of Position, including, but not limited to,
10 any factual data, analysis, or opinion supporting that position and all supporting documentation
11 relied upon by the Government. Within 10 days after receipt of the Government's Statement of
12 Position, the Defendant may submit a Reply. Where appropriate, the Government may allow
13 submission of supplemental statements of position by the parties to the dispute.

14 35. Following receipt of a Defendant's Statement of Position and any other
15 documents submitted pursuant to Paragraph 34, the Director of the Superfund Division, EPA
16 Region IX, or the Forest Service Region 4 Regional Forester, will issue a final administrative
17 decision resolving the dispute. The Director's or Regional Forester's decision shall be binding
18 on the Defendant unless, within 20 Days after receipt of the decision, the Defendant files with
19 the Court and serves on the United States a motion for judicial review of the decision setting
20 forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and
21 the schedule, if any, within which the dispute must be resolved to ensure orderly implementation
22 of the Consent Decree. The United States may file a response to the Defendant's motion within
23 the time period allowed by the Civil Local Rules of this Court.

24 36. Judicial review of any dispute governed by this Section shall be governed by
25

26
27 ^{1/} For purposes of Dispute Resolution under this Section X, EPA and the Forest Service shall be
28 referred to collectively as the "Government."

1 applicable principles of law.

2 37. The invocation of formal dispute resolution procedures under this Section shall
3 not extend, postpone or affect in any way any obligation of the Defendant under this Consent
4 Decree, not directly in dispute, unless the Government or the Court agrees otherwise. Stipulated
5 penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed
6 pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties
7 shall accrue from the first day of noncompliance with any applicable provision of this Consent
8 Decree. In the event that the Defendant does not prevail on the disputed issue, stipulated
9 penalties shall be assessed and paid as provided in Section IX (Failure to Comply with Consent
10 Decree Requirements) of this Consent Decree.

11 XI. COVENANTS BY PLAINTIFF, SETTLING FEDERAL AGENCIES, AND THE
12 ELEM TRIBE

13 38. Covenant Not to Sue Bradley Mining Settling Defendants and Bradley Trust
14 Settling Defendants by United States. In consideration of the payments and land transfers that
15 will be made by Defendants under the terms of this Consent Decree, and except as otherwise
16 specifically provided in Section XII (Plaintiff's Reservation of Rights), the United States
17 covenants not to sue or to take administrative action against: (1) the Bradley Mining Settling
18 Defendants pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, with regard
19 to the Covered Sites; and (2) the Bradley Trust Settling Defendants pursuant to Sections 106 and
20 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, with regard to the Sulphur Bank Site. The covenant
21 not to sue for the Bradley Mining Settling Defendants shall take effect upon (i) the receipt by the
22 United States of all payments required by Paragraphs 8 and 10, (ii) the Assignment to the
23 Redevelopment Trust, as required by Paragraph 19, of Parcels 29 and 30 and any other property
24 rights Bradley Mining has with respect to Parcels 24, 25, 32, and 83, and (iii) any amount due
25 under Section IX (Failure to Comply with Consent Decree Requirements). The covenant not to
26 sue for the Bradley Trust Settling Defendants shall take effect upon the Assignment to the
27 Redevelopment Trust, as required by Paragraph 19, of Parcels 24, 25, 32, and 83. These
28

1 covenants not to sue accorded to the Bradley Mining Settling Defendants and the Bradley Trust
2 Settling Defendants are conditioned upon satisfactory performance by Defendants of their
3 obligations under this Consent Decree as set forth in this Paragraph. With respect to the Bradley
4 Mining Settling Defendants and the Bradley Trust Settling Defendants, these covenants not to
5 sue are also conditioned upon the veracity and completeness of the Financial Information
6 provided to EPA by Bradley Mining and Bradley Trust. If the Financial Information of any
7 Defendant is subsequently determined by EPA to be false or, in any material respect, inaccurate,
8 such Defendant shall forfeit all payments made pursuant to this Consent Decree and these
9 covenants not to sue and the contribution protection in Section XIV (Effect of Settlement;
10 Contribution Protection) shall be null and void as to the Settling Defendants associated with that
11 Defendant. Such forfeiture shall not constitute liquidated damages and shall not in any way
12 foreclose the United States' right to pursue any other causes of action arising from such
13 Defendant's false or materially inaccurate information. These covenants not to sue extend only
14 to the Bradley Mining Settling Defendants and the Bradley Trust Settling Defendants and do not
15 extend to any other person.

16 39. Covenant Not to Sue Redevelopment Trust by United States. In consideration of
17 the actions that will be performed by the Redevelopment Trust, and except as provided in
18 Paragraph 47, the United States covenants not to sue or take any other civil or administrative
19 action against the Redevelopment Trust for any and all civil liability for injunctive relief or
20 reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C.
21 §§ 9606 or 9607(a), with respect to all Existing Contamination at the Sulphur Bank Site. With
22 respect to any claim or cause of action asserted by the United States, the Redevelopment Trust
23 shall bear the burden of proving that the claim or cause of action, or any part thereof, is
24 attributable solely to Existing Contamination. This covenant not to sue shall take effect upon the
25 latter date of: (1) the creation of the Redevelopment Trust and (ii) the Effective Date of this
26 Consent Decree. This covenant not to sue extends only to the Redevelopment Trust and does not
27 extend to any other person.
28

1 40. Covenant for Settling Federal Agencies by EPA. In consideration of the
2 payments that will be made by the United States, on behalf of the Settling Federal Agencies, and
3 except as specifically provided in Section XII (Plaintiff's Reservation of Rights), EPA covenants
4 not to take administrative action against the Settling Federal Agencies pursuant to Sections 106
5 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), with respect to the Sulphur Bank Site and
6 the Stibnite Mine Site. This covenant shall take effect upon receipt by EPA of all payments to
7 be paid by the United States on behalf of the Settling Federal Agencies required by Paragraph 15
8 of Section VII (Payments by Defendants and Settling Federal Agencies). This covenant is
9 conditioned upon the satisfactory performance by the Settling Federal Agencies of their
10 obligations under this Consent Decree. This covenant extends only to the Settling Federal
11 Agencies and does not extend to any other person.

12 41. Covenant by Settling Federal Agencies. Settling Federal Agencies agree not to
13 assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund
14 (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA
15 Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Sulphur
16 Bank Site, the Stibnite Mine Site, and this Consent Decree. This covenant does not preclude
17 demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in
18 the performance of its duties (other than pursuant to this Consent Decree) as lead or support
19 agency under the National Contingency Plan (40 C.F.R. Part 300).

20 42. Elem Tribe's Release and Covenant Not to Sue the United States. The Elem
21 Tribe hereby forever releases, discharges, covenants not to sue, and agrees not to assert (by way
22 of the commencement of an action, the joinder of the United States in an existing action or in any
23 other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in
24 law or in equity which it may have had, or hereafter have, against the United States, its
25 contractors or employees, including EPA, BIA, and DOI, with respect to the Sulphur Bank Site
26 or this Consent Decree, including, but not limited to:

27 a. any direct or indirect claim for reimbursement from the EPA Hazardous
28

1 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42
2 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

3 b. any claim arising out of the response actions at or in connection with the
4 Sulphur Bank Site, including any claim based on EPA's selection of response actions, oversight
5 of response activities, or approval of plans for such activities, and any claim under the United
6 States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491,
7 the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

8 c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C.
9 §§ 9607 or 9613, including any claim for damages for injury to, destruction of, or loss of natural
10 resources, and for the costs of any natural resource damage assessment, related to the Sulphur
11 Bank Site; or

12 d. any claim concerning a breach of a fiduciary duty or breach of trust with
13 respect to the Sulphur Bank Site or this Consent Decree.

14 43. Elem Tribe's Release and Covenant Not to Sue Settling Defendants. Upon the
15 transfer of the land from Bradley Trust to the Redevelopment Trust for the benefit of the
16 Elem Tribe as provided for in Paragraph 19, the Elem Tribe hereby forever releases, discharges,
17 covenants not to sue, and agrees not to assert (by way of the commencement of an action, the
18 joinder of the Settling Defendants in an existing action or in any other fashion) any and all
19 claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it
20 may have had, or hereafter have, against the Settling Defendants or their contractors or
21 employees with respect to the Sulphur Bank Site or this Consent Decree, including, but not
22 limited to:

23 a. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.
24 §§ 9607 and 9613, including any claim for damages for injury to, destruction of, or loss of
25 natural resources, and for the costs of any natural resource damage assessment, related to the
26 Sulphur Bank Site;

27 b. any claim arising out of the response actions at or in connection with the
28

1 Sulphur Bank Site, including any claim at common law; and

2 c. the Elem Tribe expressly releases and waives any and all claims, defenses,
3 rights, and benefits which it may have against Settling Defendants under any state or federal law
4 or in equity, which provides relief or exclusions from general releases such as:

5 “A general release does not extend to claims which the creditor does not know or suspect
6 to exist in his favor at the time of executing the release, which if known by him must
7 have materially affected his settlement with the debtor.”

8 44. Elem Tribe’s Release and Covenant Not to Sue the Redevelopment Trust. The
9 Elem Tribe hereby forever releases, discharges, covenants not to sue, and agrees not to assert (by
10 way of the commencement of an action, the joinder of the Redevelopment Trust in an existing
11 action or in any other fashion) any and all claims, causes of action, suits or demands of any kind
12 whatsoever in law or in equity which it may have had, or hereafter have, against the
13 Redevelopment Trust or its contractors or employees with respect to the Sulphur Bank Site or
14 this Consent Decree, including, but not limited to:

15 a. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.
16 §§ 9607 and 9613, including any claim for damages for injury to, destruction of, or loss of
17 natural resources, and for the costs of any natural resource damage assessment, related to the
18 Sulphur Bank Site;

19 b. any claim arising out of the response actions at or in connection with the
20 Sulphur Bank Site, including any claim at common law; and

21 c. the Elem Tribe expressly releases and waives any and all claims, defenses,
22 rights, and benefits which it may have against the Redevelopment Trust under any state or
23 federal law or in equity, which provides relief or exclusions from general releases such as:

24 “A general release does not extend to claims which the creditor does not know or suspect
25 to exist in his favor at the time of executing the release, which if known by him must
26 have materially affected his settlement with the debtor.”

27 Provided, however, the Elem Tribe reserves its rights against the Trustee of the Redevelopment
28

1 Trust for claims based on the Trustee's negligence, gross negligence or willful acts or omissions
2 in relation to its duties under the Redevelopment Trust Agreement.

3 XII. PLAINTIFF'S RESERVATION OF RIGHTS

4 45. EPA reserves the right to issue an administrative order seeking to compel DOI:
5 (1) to perform response actions relating to the portions of the Sulphur Bank Site known as the
6 Elem Indian Colony or BIA Road 120, or (2) to reimburse the United States for additional costs
7 of response if:

8 (i) conditions at the Elem Indian Colony or BIA Road 120, previously unknown to EPA,
9 are discovered, or

10 (ii) information, previously unknown to EPA, is received, in whole or in part,
11 and EPA determines that these previously unknown conditions or information together with any
12 other relevant information indicates that the remedial action performed or to be performed at
13 Elem Indian Colony or BIA Road 120 is not protective of human health or the environment.

14 46. For purposes of Paragraph 45, the information and the conditions known to EPA
15 shall include only that information and those conditions known to EPA as of the Effective Date
16 of this Consent Decree, and set forth in any Action Memoranda, Engineering Evaluation/Cost
17 Analyses, or other EPA decision documents related to EPA's past response actions at the
18 Sulphur Bank Site that are part of the Sulphur Bank Site file as of the Effective Date of this
19 Consent Decree.

20 47. General Reservation of Rights. The United States reserves, and this Consent
21 Decree is without prejudice to, all rights of the United States against Settling Defendants and the
22 Redevelopment Trust with respect to all matters not expressly included within the covenants set
23 forth in Paragraphs 38 and 39. EPA and the federal natural resource trustees reserve, and this
24 Consent Decree is without prejudice to, all rights against the Settling Federal Agencies with
25 respect to all matters not expressly included within the covenant set forth in Paragraph 40.

26 a. Notwithstanding any other provision of this Consent Decree, the United
27 States reserves, and this Consent Decree is without prejudice to, all rights against Settling
28

1 Defendants with respect to:

2 1. claims based on a failure by Settling Defendants to meet a
3 requirement of this Consent Decree;

4 2. liability arising from the past, present, or future disposal, release,
5 or threat of release of hazardous substances, pollutants, contaminants, or solid wastes outside of
6 the Covered Sites;

7 3. liability based on the ownership or operation of the Covered Sites
8 by Settling Defendants when such ownership or operation commences after signature of this
9 Consent Decree;

10 4. liability based on by Settling Defendants' transportation,
11 treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or
12 disposal of Waste Material at or in connection with the Covered Sites, other than as provided in a
13 ROD, or otherwise ordered by EPA or authorized by law, after signature of this Consent Decree;

14 5. with respect to the Mt. Diablo Mine Site, the Stibnite Mine Site,
15 the Springfield Mine Site, the IMA Mine Site, the Bretz Mine Site, and the Opalite Mine Site,
16 liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of
17 any natural resource damage assessments;

18 6. criminal liability; and

19 7. liability for injunctive relief or administrative order enforcement
20 under Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions outside of the Covered
21 Sites.

22 b. Notwithstanding any other provision of this Consent Decree, EPA and the
23 federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all
24 rights against the Settling Federal Agencies with respect to:

25 1. claims based on a failure by Settling Federal Agencies to meet a
26 requirement of this Consent Decree;

27 2. liability arising from the past, present, or future disposal, release,
28

1 or threat of release of hazardous substances, pollutants, contaminants, or solid wastes outside of
2 the Covered Sites;

3 3. liability based on the ownership or operation of the Covered Sites
4 by Settling Federal Agencies when such ownership or operation commences after signature of
5 this Consent Decree;

6 4. liability based on Settling Federal Agencies' transportation,
7 treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or
8 disposal of Waste Material at or in connection with the Covered Sites, other than as provided in a
9 ROD, or otherwise ordered by EPA or authorized by law, after signature of this Consent Decree;

10 5. with respect to the Mt. Diablo Mine Site, the Stibnite Mine Site,
11 the Springfield Mine Site, the IMA Mine Site, the Bretz Mine Site, and the Opalite Mine Site,
12 liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of
13 any natural resource damage assessments;

14 6. criminal liability; and

15 7. liability for injunctive relief or administrative order enforcement
16 under Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions outside of the Covered
17 Sites.

18 c. Notwithstanding any other provision of this Consent Decree, the United
19 States reserves, and this Consent Decree is without prejudice to, all rights against the
20 Redevelopment Trust with respect to:

21 1. claims based on a failure to meet a requirement of this Consent
22 Decree;

23 2. claims based on its negligence, gross negligence or willful acts or
24 omissions in relation to its duties under the Redevelopment Trust Agreement;

25 3. liability for the exacerbation of Existing Contamination by the
26 Redevelopment Trust; and

27 4. criminal liability.
28

1 48. Notwithstanding any other provision of this Consent Decree, the United States
2 retains all authority and reserves all rights, and this Consent Decree is without prejudice to, the
3 right to reinstitute or reopen this action against a Defendant, or to commence a new action
4 seeking relief other than as provided in this Consent Decree from a Defendant or the Settling
5 Defendants associated with that Defendant, if the Financial Information provided, or the
6 financial certification made in Paragraph 73.b., by such Defendant is false or, in a material
7 respect, inaccurate.

8 49. Notwithstanding any other provision of this Consent Decree, the United States
9 retains all authority and reserves all rights to take any and all response actions authorized by law.

10
11 XIII. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS

12 50. Settling Defendants hereby covenant not to sue and agree not to assert any claims
13 or causes of action against the United States, the Elem Tribe, the Redevelopment Trust, or their
14 contractors or employees, with respect to the Covered Sites or this Consent Decree, including,
15 but not limited to:

16 a. any direct or indirect claim for reimbursement from the EPA Hazardous
17 Substance Superfund based on CERCLA Sections 106(b)(2), 107, 111, 112, or 113, 42 U.S.C.
18 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

19 b. any claims arising out of response actions at or in connection with the
20 Covered Sites, including any claims under the United States Constitution, the California
21 Constitution, the Oregon Constitution, the Idaho Constitution, the Tucker Act, 42 U.S.C. § 1491,
22 the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

23 c. any claims against the United States, the Redevelopment Trust or the
24 Elem Tribe, including any department, agency, or instrumentality of the United States or the
25 Elem Tribe, under CERCLA Sections 107 or 113 related to the Covered Sites; and

26 d. any claims against the United States arising out of response activities at
27 the Covered Sites, including claims based on EPA's or the Forest Service's or BLM's selection
28

1 of response actions, oversight of response activities or approval of plans for such activities;

2 e. provided, however, Settling Defendants reserve, and this Consent Decree
3 is without prejudice to, all rights against the Redevelopment Trust with respect to claims based
4 on a failure to meet a requirement of this Consent Decree.

5 51. Except as provided in Paragraph 53 (claims against other PRPs) and Paragraph 60
6 (res judicata and other defenses), these covenants not to sue shall not apply to Settling
7 Defendants in the event the United States brings a cause of action or issues an order against
8 Settling Defendants pursuant to the reservations set forth in Section XII (Plaintiff's Reservation
9 of Rights), other than in Paragraph 47.a. (claims for failure to meet a requirement of this Consent
10 Decree) or 47.f. (criminal liability), but only to the extent that Settling Defendants' claims arise
11 from the same response action or response costs that the United States is seeking against the
12 Settling Defendants pursuant to the applicable reservation.

13 52. Nothing in this Consent Decree shall be deemed to constitute approval or
14 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or
15 40 C.F.R. § 300.700(d).

16 53. a. With the exception of claims or causes of actions against Bradley
17 Mining's insurance carriers, Bradley Mining agrees not to assert any claims and to waive all
18 claims or causes of action (including, but not limited to, claims or causes of action under Section
19 107(a) and 113 of CERCLA) that it may have for all matters relating to the Covered Sites against
20 Bradley Trust or any other person who is a potentially responsible party under CERCLA at any
21 of the Covered Sites. This waiver shall not apply with respect to any defense, claim, or cause of
22 action that Bradley Mining may have against any person if such person asserts a claim or cause
23 of action relating to the Covered Sites against Bradley Mining.

24 b. Bradley Trust agrees not to assert any claims and to waive all claims or
25 causes of action (including, but not limited to, claims or causes of action under Section 107(a)
26 and 113 of CERCLA) that it may have for all matters relating to the Sulphur Bank Site against
27 Bradley Mining or any other person who is a potentially responsible party under CERCLA at the
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1 Sulphur Bank Site. This waiver shall not apply with respect to any defense, claim, or cause of
2 action that Bradley Trust may have against any person if such person asserts a claim or cause of
3 action relating to the Sulphur Bank Site against Bradley Trust.

4 XIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

5 54. Except as expressly provided in this Consent Decree, nothing in this Consent
6 Decree shall be construed to create any rights in, or grant any cause of action to, any person not a
7 Party to this Consent Decree. Except as provided in this Consent Decree, each of the Parties
8 expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of
9 CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party
10 may have with respect to any matter, transaction, or occurrence relating in any way to the
11 Covered Sites against any person not a Party hereto. Nothing in this Consent Decree diminishes
12 the rights of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C.
13 § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response
14 action and to enter into settlements that give rise to contribution protection under Section
15 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

16 55. Contribution Protection for Bradley Mining Settling Defendants and Bradley
17 Trust Settling Defendants.

18 a. The Parties agree, and by entering this Consent Decree this Court finds,
19 that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2)
20 of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Bradley Mining Settling Defendants are
21 entitled, as of the Effective Date of this Consent Decree, to protection from contribution actions
22 or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be
23 otherwise provided by law, for “matters addressed” in this Consent Decree. For purposes of this
24 subparagraph a., “matters addressed” shall mean all response actions taken or to be taken and all
25 response costs incurred or to be incurred, at or in connection with the Covered Sites, by the
26 United States or any other person except for the State of California, the State of Oregon or the
27 State of Idaho; provided, however, that if the United States exercises rights under the
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1 reservations in Section XII (Plaintiff’s Reservation of Rights) of this Consent Decree, other than
2 in Paragraph 47.a. (claims for failure to meet a requirement of this Consent Decree), or 47.f.
3 (criminal liability), the “matters addressed” in this Consent Decree will no longer include those
4 response costs or response actions that are within the scope of the exercised reservation.

5 b. The Parties agree, and by entering this Consent Decree this Court finds,
6 that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2)
7 of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Bradley Trust Settling Defendants are entitled,
8 as of the Effective Date of this Consent Decree, to protection from contribution actions or claims
9 as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise
10 provided by law, for “matters addressed” in this Consent Decree. For purposes of this
11 subparagraph b., “matters addressed” shall mean all response actions taken or to be taken and all
12 response costs incurred or to be incurred, at or in connection with the Sulphur Bank Site, by the
13 United States or any other person except for the State of California; provided, however, that if
14 the United States exercises rights under the reservations in Section XII (Plaintiff’s Reservation
15 of Rights) of this Consent Decree, other than in Paragraph 47.a. (claims for failure to meet a
16 requirement of this Consent Decree), or 47.f. (criminal liability), the “matters addressed” in this
17 Consent Decree will no longer include those response costs or response actions that are within
18 the scope of the exercised reservation.

19 56. The Parties agree, and by entering this Consent Decree this Court finds, that this
20 settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of
21 CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Federal Agencies are entitled, as of the
22 Effective Date of this Consent Decree, to protection from contribution actions or claims as
23 provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise
24 provided by law, for “matters addressed” in this Consent Decree. For purposes of this
25 Paragraph, “matters addressed” shall mean all response actions taken or to be taken and all
26 response costs incurred or to be incurred, at or in connection with the Sulphur Bank Site and the
27 Stibnite Mine Site, by the United States or any other person except for the State of California or
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1 the State of Idaho.

2 57. The Parties further agree, and by entering this Consent Decree this Court finds,
3 that upon the creation of the Redevelopment Trust, the Redevelopment Trust shall be entitled to
4 protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42
5 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this
6 Consent Decree. For purposes of this Paragraph, “matters addressed” shall mean all response
7 actions taken or to be taken and all response costs incurred or to be incurred, at or in connection
8 with the Sulphur Bank Site by the United States or any other person except for the State of
9 California.

10 58. Each Settling Defendant shall, with respect to any suit or claim brought by it for
11 matters related to this Consent Decree, notify the United States in writing no later than 60 days
12 prior to the initiation of such suit or claim.

13 59. Each Settling Defendant shall, with respect to any suit or claim brought against it
14 for matters related to this Consent Decree, notify in writing the United States within 10 days of
15 service of the complaint on it. In addition, the Settling Defendant shall notify the United States
16 within 10 days of service on it or receipt by it of any Motion for Summary Judgment and within
17 10 days of receipt by it of any order from a court setting a case for trial.

18 60. In any subsequent administrative or judicial proceeding initiated by the United
19 States for injunctive relief, recovery of response costs, or other relief relating to the Covered
20 Sites, Settling Defendants shall not assert, and may not maintain, any defense or claim based
21 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting,
22 or other defenses based upon any contention that the claims raised by the United States in the
23 subsequent proceeding were or should have been brought in the instant case; provided, however,
24 that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in
25 Section XI (Covenants by Plaintiff, Settling Federal Agencies, and the Elem Tribe).

26 XV. ACCESS AND INSTITUTIONAL CONTROLS

27 61. If the Covered Sites, or any property where access and/or land/water use
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1 restrictions are needed to implement response activities at the Covered Sites, are owned or
2 controlled by either of the Defendants, such Defendant shall meet the requirements of this
3 Paragraph. Commencing on the date of lodging of this Consent Decree, Defendants, with
4 respect to all Covered Sites, shall provide the United States and its representatives, including
5 EPA and its contractors, the Forest Service and its contractors, and BLM and its contractors,
6 with access at all reasonable times to the Covered Sites, or such other property, for the purpose
7 of conducting any response activity related to the Covered Sites, including, but not limited to, the
8 following activities:

- 9 1. Monitoring, investigation, removal, remedial, operation and maintenance,
10 or other response activities at the Covered Sites;
- 11 2. Verifying any data or information submitted to the United States or the
12 State;
- 13 3. Conducting investigations regarding contamination at or near the Covered
14 Sites;
- 15 4. Obtaining samples;
- 16 5. Assessing the need for, planning, or implementing additional response
17 actions at or near the Covered Sites;
- 18 6. Inspecting and copying records, operating logs, contracts, or other
19 documents maintained or generated by Defendants or their agents, consistent with Section XVII
20 (Access to Information);
- 21 7. Assessing Defendants' compliance with this Consent Decree;
- 22 8. Determining whether the Covered Sites or other real property are being
23 used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted
24 under the Consent Decree; and
- 25 9. Implementing, monitoring, maintaining, reporting on, and enforcing any
26 Institutional Controls.
- 27 62. If the Sulphur Bank Site, or any property where access and/or land/water use
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1 restrictions are needed to implement response activities at the Sulphur Bank Site, is owned or
2 controlled by the Redevelopment Trust, the Redevelopment Trust shall meet the requirements of
3 this Paragraph.

4 a. The Redevelopment Trust, when it owns or controls Parcels 24, 25, 29, 30,
5 32, 33, 39, 57, 58, 81, and 83, and the Excised Lands (the “Covered Parcels”), shall provide:
6 (i) the United States and its representatives, including EPA and its contractors, and (ii) the State
7 of California and its representatives, with access at all reasonable times to the Covered Parcels,
8 or such other property, for the purpose of conducting any response activity related to the Sulphur
9 Bank Site, including, but not limited to, the following activities:

- 10 1. Monitoring, investigation, removal, remedial, operation and
11 maintenance, or other activities at the Sulphur Bank Site;
 - 12 2. Verifying any data or information submitted to the United States or
13 the State;
 - 14 3. Conducting investigations regarding contamination at or near the
15 Sulphur Bank Site;
 - 16 4. Obtaining samples;
 - 17 5. Assessing the need for, planning, or implementing additional
18 response actions at or near the Sulphur Bank Site;
 - 19 6. Inspecting and copying records, operating logs, contracts, or other
20 documents maintained or generated by the Redevelopment Trust or its agents;
 - 21 7. Assessing the Redevelopment Trust’s compliance with this
22 Consent Decree;
 - 23 8. Determining whether the Covered Parcels or other real property
24 are being used in a manner that is prohibited or restricted, or that may need to be prohibited or
25 restricted under the Consent Decree; and
 - 26 9. Implementing, monitoring, maintaining, reporting on, and
27 enforcing any Institutional Controls.
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1 b. with respect to Parcel 29 and Parcel 30, including the Excised Lands, as of
2 the Effective Date of this Consent Decree, the Redevelopment Trust, except as provided in
3 Paragraph 62.d., shall not use Parcel 29 and Parcel 30, including the Excised Lands, in any
4 manner that EPA determines will pose an unacceptable risk to human health or to the
5 environment due to exposure to Existing Contamination or interfere with or adversely affect the
6 implementation, integrity, or protectiveness of the removal or remedial measures to be
7 performed at the Sulphur Bank Site. In addition, for any portion of Parcel 29 and Parcel 30,
8 including the Excised Lands, that is either owned or controlled by the Redevelopment Trust, the
9 following restrictions shall apply:

10 (i) where response actions have not, are not or will not be carried out by EPA, the
11 Redevelopment Trust shall consult with EPA at least 120 days prior to commencing on-site
12 activities that may impact the Sulphur Bank Site to ensure that those proposed activities will not
13 interfere with or adversely affect the implementation, integrity, or protectiveness of the removal
14 or remedial measures to be performed at the Sulphur Bank Site; and

15 (ii) where response actions have been, are or will be carried out by EPA, or Institutional Controls
16 have been imposed by EPA, the following restrictions shall apply and include, but are not
17 limited to:

18 1. No excavation, drilling, grading, investigation, trenching or
19 backfilling of soil without first giving notice to and obtaining prior written approval from EPA
20 Region IX;

21 2. No new construction of any kind or excavation activities involving
22 the removal or displacement of more than 10 cubic yards of soil without: (i) obtaining the prior
23 written approval of EPA in accordance with Paragraph 62.d.; and (ii) meeting the following
24 requirements: (a) the new construction or excavation shall be supported by subsurface
25 exploration and analytical data sufficient to characterize the construction area for the possible
26 existence of Existing Contamination; (b) if Existing Contamination is known to be present or is
27 discovered in the construction or excavation area, it shall either be remediated or the new
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1 construction and excavation activities shall be designed to protect the Response Action Systems,
2 and all buildings and structures shall be appropriately designed to protect occupants; and
3 (c) appropriate worker and public health and safety precautions shall be planned and
4 implemented prior to commencing construction or excavation, including, but not limited to,
5 preparation of a health and safety plan for the proposed activity, performance of dust control,
6 implementation of air monitoring programs, use of appropriate personal protective equipment,
7 use of appropriate engineering controls, and other appropriate forms of worker protection;

8 3. No human habitation and no construction or installation of
9 buildings for use as a residence, hospital, medical care facility, day care center, or school for
10 persons under the age of 21 years;

11 4. No injecting into or pumping from hydrothermal subsurface
12 geologic systems that may adversely affect any remedy designed to treat water in the Herman
13 Impoundment or that would result in increased discharges to either Clear Lake, the Herman
14 Impoundment or to the wetlands north of the Sulphur Bank Site;

15 5. No drilling for a water supply for residential or commercial use,
16 geothermal resources, oil or gas.

17 6. No extraction of groundwater for purposes or uses other than a
18 removal or remediation at the Sulphur Bank Site;

19 7. No alteration of surface water controls constructed or to be
20 constructed as part of a removal or remediation at the Sulphur Bank Site;

21 8. No creation of topographic low areas where water may pond,
22 including accessory structures, swimming pools, and spas;

23 9. No other activity that has the potential to interfere with the
24 function, operation or maintenance of Response Action Systems located on the Sulphur Bank
25 Site; and

26 10. No conveyance of any interest in any portion of Parcel 29 or Parcel
27 30, including the Excised Lands, without first giving notice to EPA Region IX, accompanied by
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1 a statement of the name of the grantee and the intended uses of the land contemplated by the
2 grantee. The Redevelopment Trust may sell, assign, transfer or exchange Parcel 29 or Parcel 30,
3 including the Excised Lands, only if any Proprietary Controls required by Paragraph 62 have
4 been recorded by the Redevelopment Trust with respect to Parcels 29 and 30, including the
5 Excised Lands.

6 c. with respect to Parcel 25 and Parcel 32, as of the Effective Date of this
7 Consent Decree, the Redevelopment Trust, except as provided in Paragraph 62.d., shall not use
8 Parcel 25 and Parcel 32 in any manner that EPA determines will pose an unacceptable risk to
9 human health or to the environment due to exposure to Existing Contamination or interfere with
10 or adversely affect the implementation, integrity, or protectiveness of the removal or remedial
11 measures to be performed at the Sulphur Bank Site, and shall be subject to the following
12 restrictions:

13 i. For the Restricted Areas of Parcel 25 and the Restricted Areas of
14 Parcel 32:

15 1. No excavation, grading, trenching, investigatory drilling or boring, or backfilling of soil
16 without (i) first giving notice to and obtaining prior written approval from EPA in
17 accordance with Paragraph 62.d.; and (ii) meeting the following requirements: (a) the
18 new construction or excavation shall be supported by subsurface exploration and
19 analytical data sufficient to characterize the construction area for the possible existence
20 of Existing Contamination; (b) if Existing Contamination is known to be present or is
21 discovered in the construction or excavation area, it shall either be remediated or the new
22 construction and excavation activities shall be designed to protect the Response Action
23 Systems, and all buildings and structures shall be appropriately designed to protect
24 occupants; and (c) appropriate worker and public health and safety precautions shall be
25 planned and implemented prior to commencing construction or excavation, including, but
26 not limited to, preparation of a health and safety plan for the proposed activity,
27 performance of dust control, implementation of air monitoring programs, use of
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1 appropriate personal protective equipment, use of appropriate engineering controls, and
2 other appropriate forms of worker protection;

3 2. No injecting into or pumping from hydrothermal subsurface geologic systems that may
4 adversely affect any remedy designed to treat water in the Herman Impoundment or that
5 would result in increased discharges or changes in discharges to either Clear Lake, the
6 Herman Impoundment or to the wetlands north of the Sulphur Bank Site;

7 3. No drilling for a water supply for residential or commercial use, geothermal resources,
8 oil or gas.

9 4. No alteration of surface water controls constructed or to be constructed on any part of
10 Parcels 25 and 32 as part of a removal or remediation at the Sulphur Bank Site;

11 5. No other activity that has the potential to interfere with the function, operation or
12 maintenance of Response Action Systems located on the Sulphur Bank Site;

13 6. No conveyance of any interest in any portion of Parcel 25 or Parcel 32 without first
14 giving notice to EPA, accompanied by a statement of the name of the grantee and the
15 intended uses of the land contemplated by the grantee. The Redevelopment Trust may
16 sell, assign, transfer or exchange Parcel 25 or Parcel 32 only if any Proprietary Controls
17 required by Paragraph 62 have been recorded by the Redevelopment Trust with respect
18 to Parcels 25 and 32;

19 7. No human habitation and no construction or installation of buildings for use as a
20 residence, hospital, medical care facility, day care center, or school for persons under the
21 age of 21 years; and

22 8. No creation of topographic low areas where water may pond, including accessory
23 structures, swimming pools, and spas;

24 ii. For those areas of Parcels 25 and 32 that are not part of the
25 Restricted Areas of Parcel 25 or the Restricted Areas of Parcel 32:

26 1. No drilling, injecting into or pumping from groundwater or hydrothermal subsurface
27 geologic systems that may adversely affect any remedy designed to treat water in the
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1 Herman Impoundment or that would result in discharges or changes in discharges to
2 either Clear Lake, the Herman Impoundment or to the wetlands north of the Sulphur
3 Bank Site;

4 2. No alteration of surface water controls constructed or to be constructed on any part of
5 Parcels 25 and 32 as part of a removal or remediation at the Sulphur Bank Site;

6 3. No other activity that has the potential to interfere with the function, operation or
7 maintenance of Response Action Systems located on the Sulphur Bank Site; and

8 4. No conveyance of any interest in any portion of Parcel 25 or Parcel 32 without first
9 giving notice to EPA, accompanied by a statement of the name of the grantee and the
10 intended uses of the land contemplated by the grantee. The Redevelopment Trust may
11 sell, assign, transfer or exchange Parcel 25 or Parcel 32 only if any Proprietary Controls
12 required by Paragraph 62 have been recorded by the Redevelopment Trust with respect
13 to Parcels 25 and 32.

14 d. If the Redevelopment Trust seeks an exception to the land/water use
15 restrictions in Paragraph 62.b. or c., the Redevelopment Trust must first obtain EPA's prior
16 written approval. No less than 120 days prior to the anticipated commencement of activities, the
17 Redevelopment Trust shall submit such a request in writing to EPA Region IX. The written
18 request shall include all necessary supporting documentation, including, but not limited to,
19 appropriate design documents, work plans, calculations, and the amount and type of proposed
20 Financial Security as provided in Paragraph 65. The Redevelopment Trust shall reimburse the
21 United States for its response costs relating to the Redevelopment Trust's proposed activity,
22 including, but not limited to, review of the application, approval or disapproval, oversight and
23 monitoring of the proposed activity, and enforcement activities related thereto. EPA will
24 respond to such request within a reasonable time by: 1) providing written approval for the
25 exception, subject to the requirement that the Redevelopment Trust, pursuant to Paragraph 65,
26 provide evidence that it has established and will maintain Financial Security in the amount
27 required by EPA; 2) providing written approval of the exception with modifications, and subject
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1 to the requirement that the Redevelopment Trust, pursuant to Paragraph 65, provide evidence
2 that it has established and will maintain Financial Security in the amount required by EPA;
3 3) requesting further information in support of the request; or 4) denying the request. The
4 decision of EPA shall be final and shall not be subject to the Dispute Resolution procedures of
5 this Consent Decree or to judicial review.

6 e. Prior to transferring any of the Excised Lands or Parcels 25, 29, 30, and
7 32, the Redevelopment Trust agrees, at the request and direction of EPA, to execute and record
8 Proprietary Controls or amendments to existing Proprietary Controls in the Recorder's Office in
9 Lake County, California, that: (i) grant a right of access to conduct any activity regarding the
10 Consent Decree including, but not limited to, those activities listed in Paragraph 62.a., and
11 (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 62.b. and c.,
12 including, but not limited to, the specific restrictions listed therein. EPA may determine that
13 additional Proprietary Controls are required following issuance of EPA's Record of Decision for
14 Operable Unit One of the Sulphur Bank Site.

15 63. a. If EPA determines that land/water use restrictions in the form of state or
16 local laws, regulations, ordinances or other governmental controls are needed to implement
17 response activities at Parcels 25, 29, 30, and 32, and the Excised Lands, ensure the integrity and
18 protectiveness thereof, or ensure non-interference therewith, the Redevelopment Trust shall
19 cooperate with EPA's efforts to secure such governmental controls.

20 b. If EPA or the Forest Service determines that land/water use restrictions in
21 the form of state or local laws, regulations, ordinances or other governmental controls are needed
22 to implement response activities at the Stibnite Mine Site, ensure the integrity and protectiveness
23 thereof, or ensure non-interference therewith, Bradley Mining shall cooperate with EPA's or the
24 Forest Service's efforts to secure such governmental controls.

25 64. Notwithstanding any provision of this Consent Decree, the United States retains
26 all of its access authorities and rights, as well as all of its rights to require land/water use
27 restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any
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1 other applicable statute or regulations.

2 XVI. FINANCIAL SECURITY

3 65. a. If the Redevelopment Trust has sought and obtained EPA's written
4 approval for an exception to the land/water use restrictions in Paragraph 62.b. or c. and at least
5 30 days prior to the anticipated commencement of activities on Parcel 25, 29, 30, or 32, or the
6 Excised Lands, the Redevelopment Trust shall provide EPA Region IX with evidence that it has
7 established and will maintain Financial Security to cover potential damage to existing or future
8 removal or remedial measures on the Sulphur Bank Site in the amount required by EPA in one or
9 more of the following forms listed below in subparagraph b.

10 b. Forms of Financial Security. The Redevelopment Trust shall provide EPA
11 Region IX with evidence of one or more of the following forms of Financial Security:

12 1. A surety bond unconditionally guaranteeing payment that is issued
13 by a surety company among those listed as acceptable sureties on federal bonds as set forth in
14 Circular 570 of the U.S. Department of the Treasury;

15 2. One or more irrevocable letters of credit, payable to or at the
16 direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to
17 issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a
18 federal or state agency;

19 3. A trust fund established for the benefit of EPA that is administered
20 by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are
21 regulated and examined by a federal or state agency;

22 4. A policy of insurance that (i) names the United States as an
23 additional insured and provides the United States with acceptable rights as a beneficiary thereof;
24 and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in
25 the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by
26 a federal or state agency; or

27 5. A demonstration by the Redevelopment Trust that the
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1 Redevelopment Trust meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to
2 the amount of the Financial Security specified above (plus the amount(s) of any other federal or
3 any state environmental obligations financially assured through the use of a financial test or
4 guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's
5 satisfaction.^{2/}

6 66. If the Redevelopment Trust can show that the estimated cost to cover potential
7 damage to existing or future removal or remedial measures has diminished below the amount set
8 forth in Paragraph 65 after the Effective Date of this Consent Decree, the Redevelopment Trust
9 may, on any anniversary date of the Effective Date of this Consent Decree, or at any other time
10 agreed to by EPA and the Redevelopment Trust, reduce the amount of the Financial Security
11 provided under Paragraph 65 to the revised estimated cost of potential damage to the remedy.
12 The Redevelopment Trust shall submit a written proposal for such reduction to EPA, in
13 accordance with the requirements of this Paragraph, and may reduce the amount of the Financial
14 Security upon approval by EPA. In the event of a dispute, the Redevelopment Trust may reduce
15 the amount of the Financial Security in accordance with the final administrative or judicial
16 decision resolving the dispute.

17 67. The Redevelopment Trust may change the form of Financial Security provided
18 under Paragraph 65 at any time, upon notice to and approval by EPA Region IX, provided that
19 the new form of Financial Security meets the requirements of Paragraph 65. In the event of a
20 dispute, the Redevelopment Trust may change the form of the Financial Security only in
21 accordance with the final administrative or judicial decision resolving the dispute.

22 XVII. ACCESS TO INFORMATION

23 68. Defendants shall provide to Plaintiff, upon request, copies of all documents and
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25 ^{2/} For purposes of this Consent Decree, references in 40 C.F.R. § 264.143(f) to the "sum of
26 current closure and post-closure costs estimates and the current plugging and abandonment costs
27 estimates" shall mean the amount of Financial Security required by EPA for the activity
28 proposed by the Redevelopment Trust.

1 information within their possession or control or that of their contractors or agents relating to
2 activities at the Covered Sites or to the implementation of this Consent Decree, including, but
3 not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
4 reports, sample traffic routing, correspondence, or other documents or information related to the
5 Covered Sites.

6 69. Confidential Business Information and Privileged Documents.

7 a. Defendants may assert business confidentiality claims covering part or all
8 of the documents or information submitted to Plaintiff under this Consent Decree to the extent
9 permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and
10 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by Plaintiff will
11 be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
12 confidentiality accompanies documents or information when they are submitted to Plaintiff, or if
13 Plaintiff has notified Defendants that the documents or information are not confidential under the
14 standards of Section 104(e)(7) of CERCLA, or 40 C.F.R. Part 2, Subpart B, the public may be
15 given access to such documents or information without further notice to Defendants.

16 b. Defendants may assert that certain documents, records, and other
17 information are privileged under the attorney-client privilege or any other privilege recognized
18 by federal law. If a Defendant asserts such a privilege in lieu of providing documents, it shall
19 provide Plaintiff with the following: (1) the title of the document, record, or information; (2) the
20 date of the document, record, or information; (3) the name, title, affiliation (e.g., company or
21 firm), and address of the author of the document, record, or information; (4) the name and title of
22 each addressee and recipient; (5) a description of the subject of the document, record, or
23 information; and (6) the privilege asserted. However, no document, report or other information
24 created or generated pursuant to the requirements of the Consent Decree shall be withheld on the
25 grounds that it is privileged.

26 70. No claim of confidentiality shall be made with respect to any data, including, but
27 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or
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1 engineering data, or any other documents or information evidencing conditions at or around the
2 Covered Sites.

3 XVIII. RETENTION OF RECORDS; CERTIFICATION

4 71. Until 10 years after the Defendants' receipt of EPA's or the Forest Service's
5 notification, transmitted pursuant to Paragraph 75, of the issuance of EPA's or the Forest
6 Service's Certification of Completion of the remedial action for each of the Covered Sites,
7 Defendants shall preserve and retain all records and documents now in their possession or
8 control, or which come into their possession or control, that relate in any manner to response
9 actions taken at the Covered Sites or liability of any person for response actions conducted and
10 to be conducted at the Covered Sites, regardless of any corporate or other retention policy to the
11 contrary.

12 72. At the conclusion of this document retention period, Defendants shall notify the
13 United States at least 90 days prior to the destruction of any such records or documents, and,
14 upon request by the United States, Defendants shall deliver any such records or documents to
15 EPA. Defendants may assert that certain documents, records and other information are
16 privileged under the attorney-client privilege or any other privilege recognized by federal law. If
17 Defendants assert such a privilege, they shall provide Plaintiff with the following: (1) the title of
18 the document, record, or information; (2) the date of the document, record, or information; (3)
19 the name, title, affiliation (e.g., company or firm), and address of the author of the document,
20 record, or information; (4) the name and title of each addressee and recipient; (5) a description of
21 the subject of the document, record, or information; and (6) the privilege asserted. However, no
22 document, report or other information created or generated pursuant to the requirements of the
23 Consent Decree shall be withheld on the grounds that it is privileged.

24 73. Defendants hereby certify that, to the best of their knowledge and belief, after
25 thorough inquiry, they have:

26 a. not altered, mutilated, discarded, destroyed or otherwise disposed of any
27 records, documents or other information relating to their potential liability regarding the Covered
28

1 Sites since notification of potential liability by the United States or the State of California or the
2 State of Idaho or the State of Oregon or the filing of suit against them regarding any of the
3 Covered Sites, and that they have fully complied with any and all EPA requests for information
4 pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and Section
5 3007 of RCRA, 42 U.S.C. § 6927; and

6 b. submitted to EPA Financial Information that fairly, accurately, and
7 materially sets forth their financial circumstances, and that those circumstances have not
8 materially changed between the time the Financial Information was submitted to EPA and the
9 time Defendants execute this Consent Decree.

10 74. The United States acknowledges that each Settling Federal Agency (1) is subject
11 to all applicable Federal record retention laws, regulations, and policies; and (2) has fully
12 complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e)
13 of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

14 XIX. NOTICES AND SUBMISSIONS

15 75. Whenever, under the terms of this Consent Decree, written notice is required to be
16 given or a report or other document is required to be sent by one Party to another, it shall be
17 directed to the individuals at the addresses specified below, unless those individuals or their
18 successors give notice of a change to the other Parties in writing. All notices and submissions
19 shall be considered effective upon receipt, unless otherwise provided. Written notice as
20 specified herein shall constitute complete satisfaction of any written notice requirement of the
21 Consent Decree with respect to the United States, EPA, the Forest Service, BLM, BIA, DOI, the
22 Settling Federal Agencies, the Elem Tribe, the Redevelopment Trust, and the Settling
23 Defendants, respectively.

24 As to the United States:

25 Chief, Environmental Enforcement Section
26 Environment and Natural Resources Division
27 U.S. Department of Justice (DJ # 90-11-3-07593)
28 P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 Robert D. Mullaney
Senior Counsel
2 Environmental Enforcement Section
U.S. Department of Justice
3 301 Howard Street, Suite 1050
San Francisco, CA 94105
4
5 Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-6-18411)
6 P.O. Box 7611
Washington, D.C. 20044-7611
7

8 Paul Cirino
Trial Attorney
Environmental Defense Section
9 U.S. Department of Justice
P.O. Box 7611
10 Washington, D.C. 20044-7611

11 As to EPA Region IX:

12 Larry Bradfish, ORC-3
Assistant Regional Counsel
13 United States Environmental Protection Agency
75 Hawthorne Street
14 San Francisco, CA 94105

15 and

16 Gary Riley, SFD-7-2
Remedial Project Manager
17 United States Environmental Protection Agency
75 Hawthorne Street
18 San Francisco, CA 94105

19 As to EPA Region X:

20 Chris Field
U.S. Environmental Protection Agency
21 Region X
1200 6th Avenue, Suite 900
22 ECL-116
Seattle, WA 98101
23

24 and

25 Wendy Watson
Attorney-Adviser
U.S. Environmental Protection Agency
26 Region X
1200 6th Avenue, Suite 900
27 ORC-158
28

1 Seattle, WA 98101

2 As to the Regional Financial Management Officers:

3 Joe Schmidt, PMD-5
4 United States Environmental Protection Agency
5 75 Hawthorne Street
6 San Francisco, CA 94105

7 Financial Management Officer, Region X
8 Attn: Chris Field
9 United States Environmental Protection Agency
10 1200 6th Avenue, Suite 900
11 ECL-116
12 Seattle, WA 98101

13 As to the Forest Service:

14 Gary Fremerman
15 USDA/OGC
16 3351 South Building
17 1400 Independence Avenue, S.W.
18 Washington, D.C. 20250-1412

19 Dean Morgan
20 Salmon-Challis NF
21 HC 63, Box 1669, Hwy. 93
22 Challis, ID 83226

23 As to BLM, BIA or DOI:

24 Karen Koch
25 Assistant Regional Solicitor
26 Office of the Regional Solicitor
27 U.S. Department of the Interior
28 2800 Cottage Way, Suite E-1712
Sacramento, CA 95825

and

Casey S. Padgett, Assistant Solicitor
Branch of Environmental Compliance and Response
Office of the Solicitor, Mail Stop #5530
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

As to the Elem Tribe:

Brian J. Cleary, Esq.
The Cleary Law Group, P.C.
101 West Prairie Center, #362

28

1 Hayden, ID 83835

2 and

3 Nathan R. Brown II
4 c/o The Elem Pomo Tribe
5 13300 E. Highway 20, Suite B
6 P.O. Box 757
7 Clearlake Oaks, CA 95423

8 As to the Redevelopment Trust:

9 Tom Connolly, Esq.
10 Trustee, Redevelopment Trust
11 Connolly Rosania & Lofstedt
12 950 Spruce Street, Suite 1C
13 Louisville, CO 80027

14 As to Bradley Mining or the Bradley Mining Settling Defendants:

15 Frederick Bradley
16 President
17 1814 Springvale Lane
18 Lincoln, CA 95648

19 and

20 Jon K. Wactor, Esq.
21 Wactor & Wick LLP
22 180 Grand Avenue, Suite 950
23 Oakland, CA 94612

24 As to Bradley Trust or the Bradley Trust Settling Defendants:

25 Frederick Bradley
26 Trustee
27 1814 Springvale Lane
28 Lincoln, CA 95648

and

Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

XX. EFFECTIVE DATE

76. The Effective Date of this Consent Decree shall be the date upon which this
Consent Decree is entered by the Court, except as otherwise provided herein.

XXI. RETENTION OF JURISDICTION

77. This Court retains jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XXII. INTEGRATION/APPENDICES

78. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. Other than the executed final versions of Appendices and deliverables that are subsequently submitted pursuant to this Consent Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree.

“Appendix A” contains maps that generally depict the Covered Sites.

“Appendix B” contains a map generally depicting Parcels 24, 25, 28, 29, 30, 32, 33, 39, 57, 58, 81, 82, and 83 as they are currently configured.

“Appendix C” is a list of the financial documents submitted to EPA by Defendants.

“Appendix D” contains the Right of Way Plats, Drawing No. 17-7-46, dated July 1970, and Drawing No. 17-7-48, dated August 3, 1970, delineating the grant of easement for a right-of-way for a road over, across, in and upon lands located in Lake County, California.

“Appendix E” is a map generally depicting those areas of Parcels 33 and 57 (the Excised Lands) that are not assigned to the Elem Tribe due to the presence of hazardous substances.

“Appendix F” is the unexecuted draft Redevelopment Trust Agreement.

“Appendix G” contains a draft grant deed to transfer the Assigned Property other than Parcel 24 and a separate draft grant deed to transfer Parcel 24.

“Appendix H” is a list of easements for access and utilities that are approved by the United States for the Assigned Property.

“Appendix I” contains a map that generally depicts Parcel 25, including the Restricted Areas of Parcel 25.

1 “Appendix J” contains a map that generally depicts Parcel 32, including the Restricted
2 Areas of Parcel 32.

3 “Appendix K” is a draft lien on the title of the Retained Lands.

4 XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

5 79. This Consent Decree shall be lodged with the Court for a period of not less than
6 thirty (30) days for public notice and comment. The United States reserves the right to withdraw
7 or withhold its consent if the comments regarding the Consent Decree disclose facts or
8 considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.
9 Settling Defendants and the Elem Tribe consent to the entry of this Consent Decree without
10 further notice.

11 80. If for any reason the Court should decline to approve this Consent Decree in the
12 form presented, this agreement is voidable at the sole discretion of any Party and the terms of the
13 agreement may not be used as evidence in any litigation between the Parties.

14 XXIV. SIGNATORIES/SERVICE

15 81. Each undersigned representative of Settling Defendants to this Consent Decree,
16 the Elem Tribe, as well as the Assistant Attorney General for the Environment and Natural
17 Resources Division of the United States Department of Justice, or her delegate, certifies that he
18 or she is fully authorized to enter into the terms and conditions of this Consent Decree and to
19 execute and legally bind such Party to this document.

20 82. Settling Defendants and the Elem Tribe hereby agree not to oppose entry of this
21 Consent Decree by this Court or to challenge any provision of this Consent Decree unless the
22 United States has notified Settling Defendants and the Elem Tribe in writing that it no longer
23 supports entry of the Consent Decree.

24 83. Each Settling Defendant shall identify, on the attached signature page, the name,
25 address and telephone number of an agent who is authorized to accept service of process by mail
26 on behalf of the Settling Defendant with respect to all matters arising under or relating to this
27 Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive
28

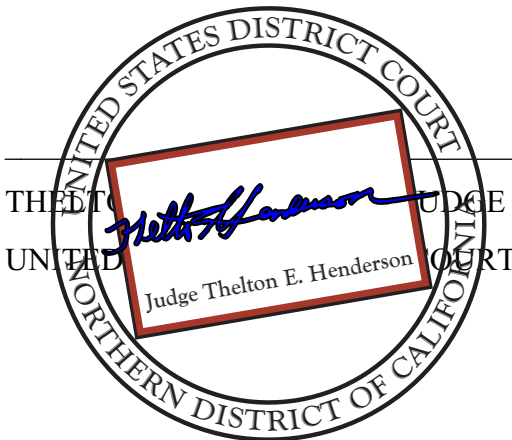
1 the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and
2 any applicable local rules of this Court, including, but not limited to, service of a summons.

3 XXV. FINAL JUDGMENT

4 84. Upon approval and entry of this Consent Decree by the Court, this Consent
5 Decree shall constitute a final judgment between and among the United States, the Elem Tribe,
6 and the Settling Defendants. The Court finds that there is no just reason for delay and therefore
7 enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

8 IT IS SO ORDERED.

9
10 Dated: 04/18/2012



11 THE
12 UNITED STATES DISTRICT COURT

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THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Bradley Mining Company, et al.

FOR THE UNITED STATES OF AMERICA

Dated: 1/12/12 Ignacia S. Moreno

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Dated: 2/14/12 Robert D. Mullaney


Robert D. Mullaney
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

Dated: 2/14/12 Robert D. Mullaney for

Paul Cirino
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

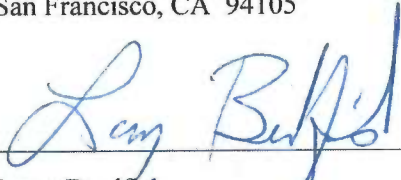
1 FOR THE UNITED STATES OF AMERICA (Cont.)

2
3
4 Dated: 2/14/2012



Jane Diamond
Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

5
6
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9
10 Dated: January 18, 2012



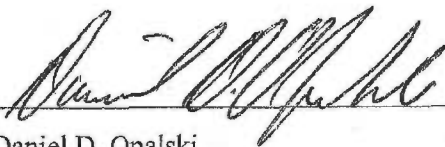
Larry Bradfish
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

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FOR THE UNITED STATES OF AMERICA (Cont.)

Dated:

2/9/2012



Daniel D. Opalski
Director, Office of Environmental Cleanup
Region X
U.S. Environmental Protection Agency
1200 6th Avenue, Suite 900
Seattle, WA 98101

Dated:

2-3-12



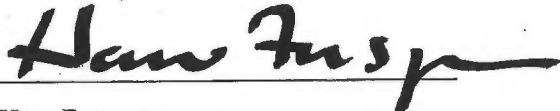
Wendy Watson
Attorney-Adviser
U.S. Environmental Protection Agency
Region X
1200 6th Avenue, Suite 900
Seattle, WA 98101

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FOR THE UNITED STATES OF AMERICA (Cont.)

Dated: 2/3/12



Harv Forsgren
Regional Forester, Intermountain Region
USDA Forest Service
324 25th Street
Ogden, UT 84401

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United
2 States, et al., v. Bradley Mining Company, et al.

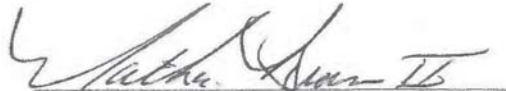
3 FOR THE ELEM TRIBE
4

5
6 Dated: January 12, 2012



7 Brian J. Cleary, Esq.
8 The Cleary Law Group, P.C.
9 101 West Prairie Center, #362
10 Hayden, ID 83835
11 Attorney for the Elem Tribe

12 Dated: 1-12-2012



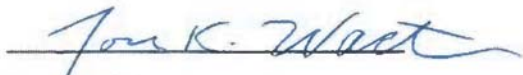
13 Nathan ~~B~~ Brown II
14 Elem Indian Colony Tribal Chairman
15 The Elem Pomo Tribe
16 ~~13300 E. Highway 20, Suite B~~
17 P.O. Box 757
18 Clearlake Oaks, CA 95423
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THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al., v. Bradley Mining Company, et al.

FOR BRADLEY MINING COMPANY AND FREDERICK BRADLEY, AS TRUSTEE OF THE WORTHEN BRADLEY FAMILY TRUST

Dated: 12-5-11

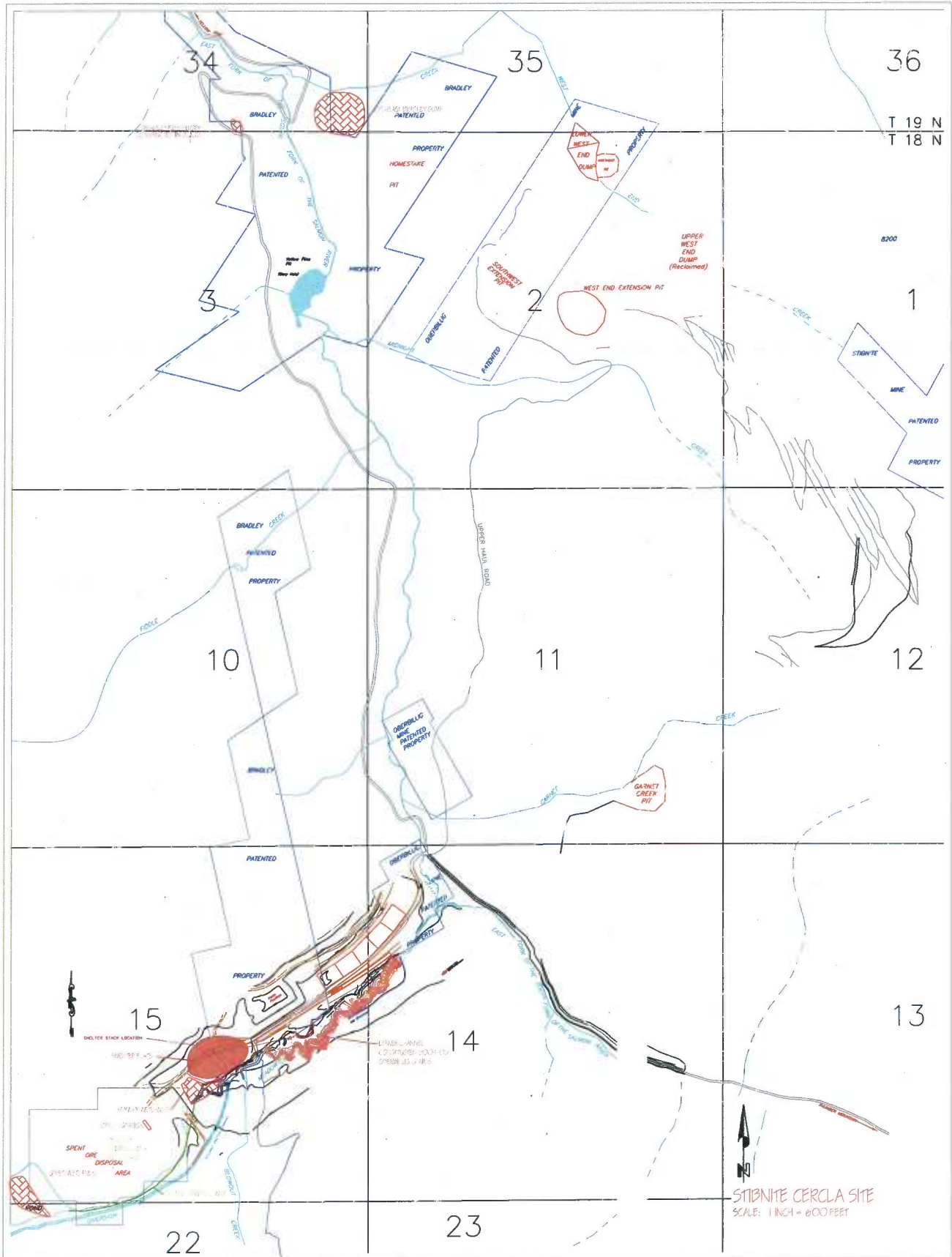


Jon K. Wactor
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, California 94612
Tel: (510) 465-5750
Fax: (510) 465-5697
Attorneys for Defendants Bradley Mining Company and Frederick Bradley, as Trustee of the Worthen Bradley Family Trust

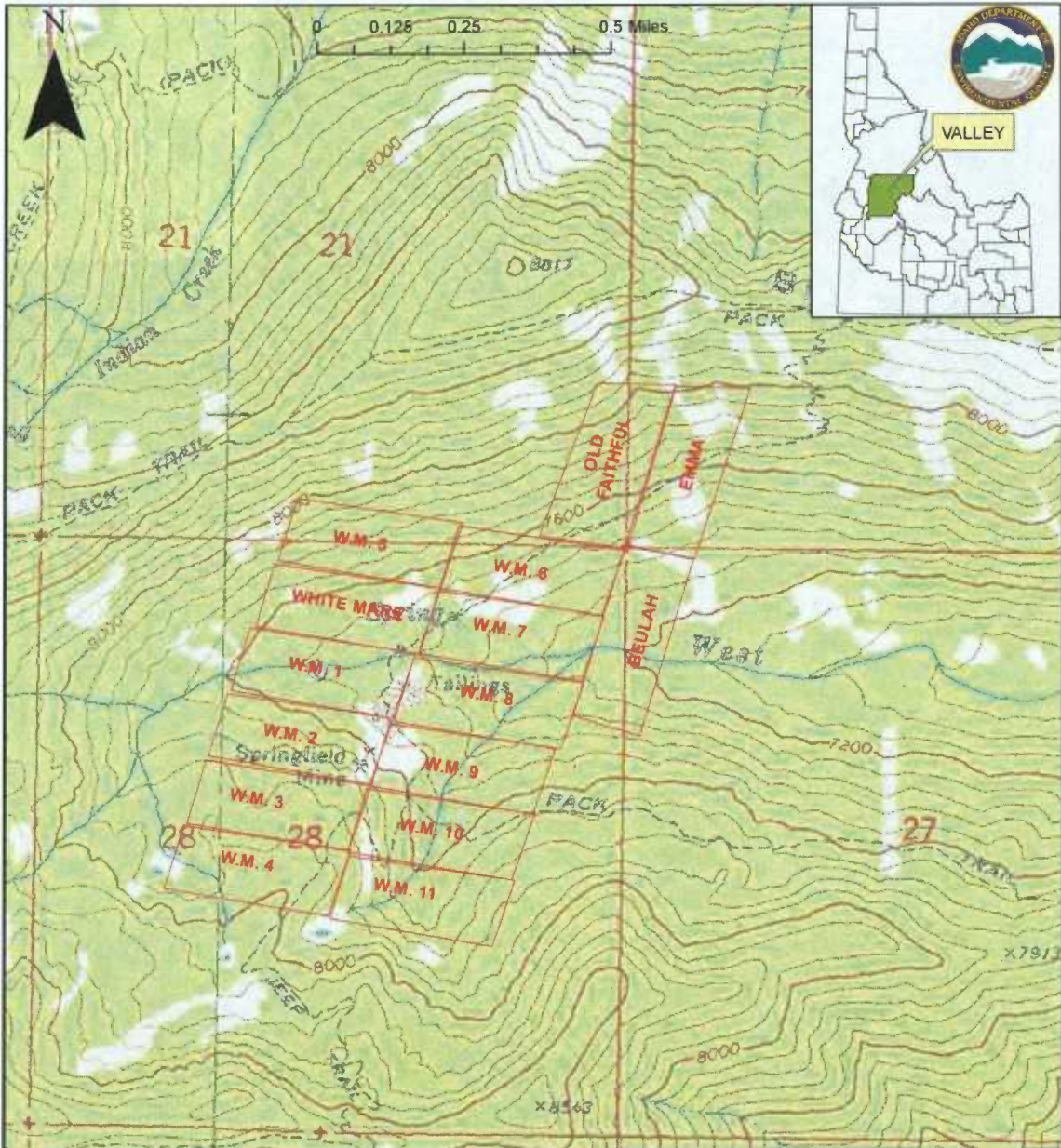
Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Jon K. Wactor
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, California 94612
Tel: (510) 465-5750
Fax: (510) 465-5697
Attorneys for Defendants Bradley Mining Company and Frederick Bradley, as Trustee of the Worthen Bradley Family Trust

APPENDIX A





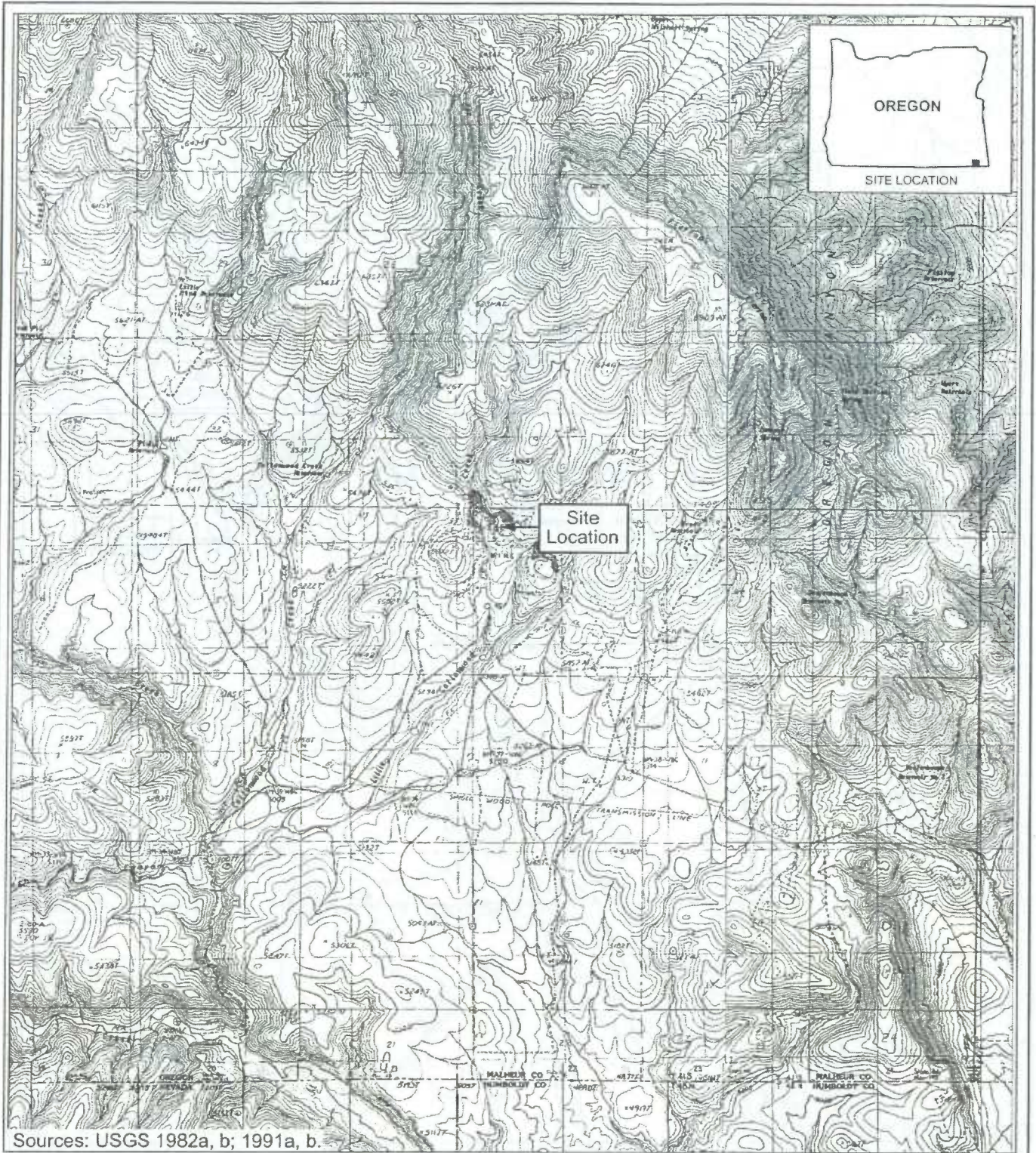


Restriction of Liability: Neither the State of Idaho nor the Department of Environmental Quality, nor any of their employees make any warranty, or assume and legal liability or responsibility for the accuracy, completeness or usefulness, of any information or data provided. The data could include technical inaccuracies or typological errors. IDEQ may update, modify, or revise the data used at anytime, without notice. 4/20/2010

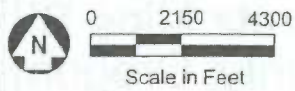
Figure 1. Topographic overview map of Springfield Scheelite Mine claims (Map source: USGS 24k Quads).



Figure 2. Aerial map of the Springfield Scheelite Mine claims. (Map source: NAIP 2004).

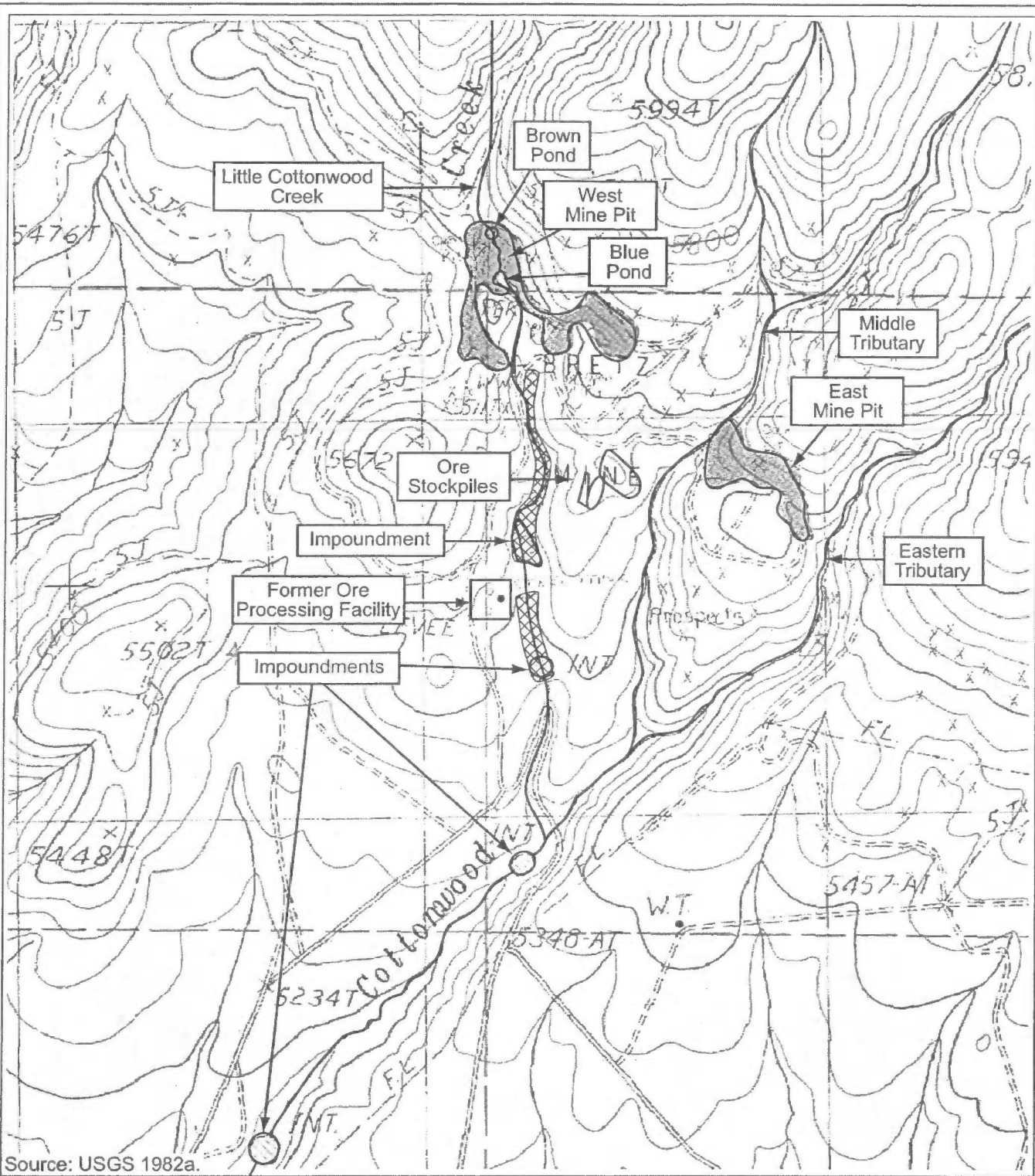


Sources: USGS 1982a, b; 1991a, b.



Site Location Map Bretz Mine SI Malheur County, Oregon

Figure
1-1



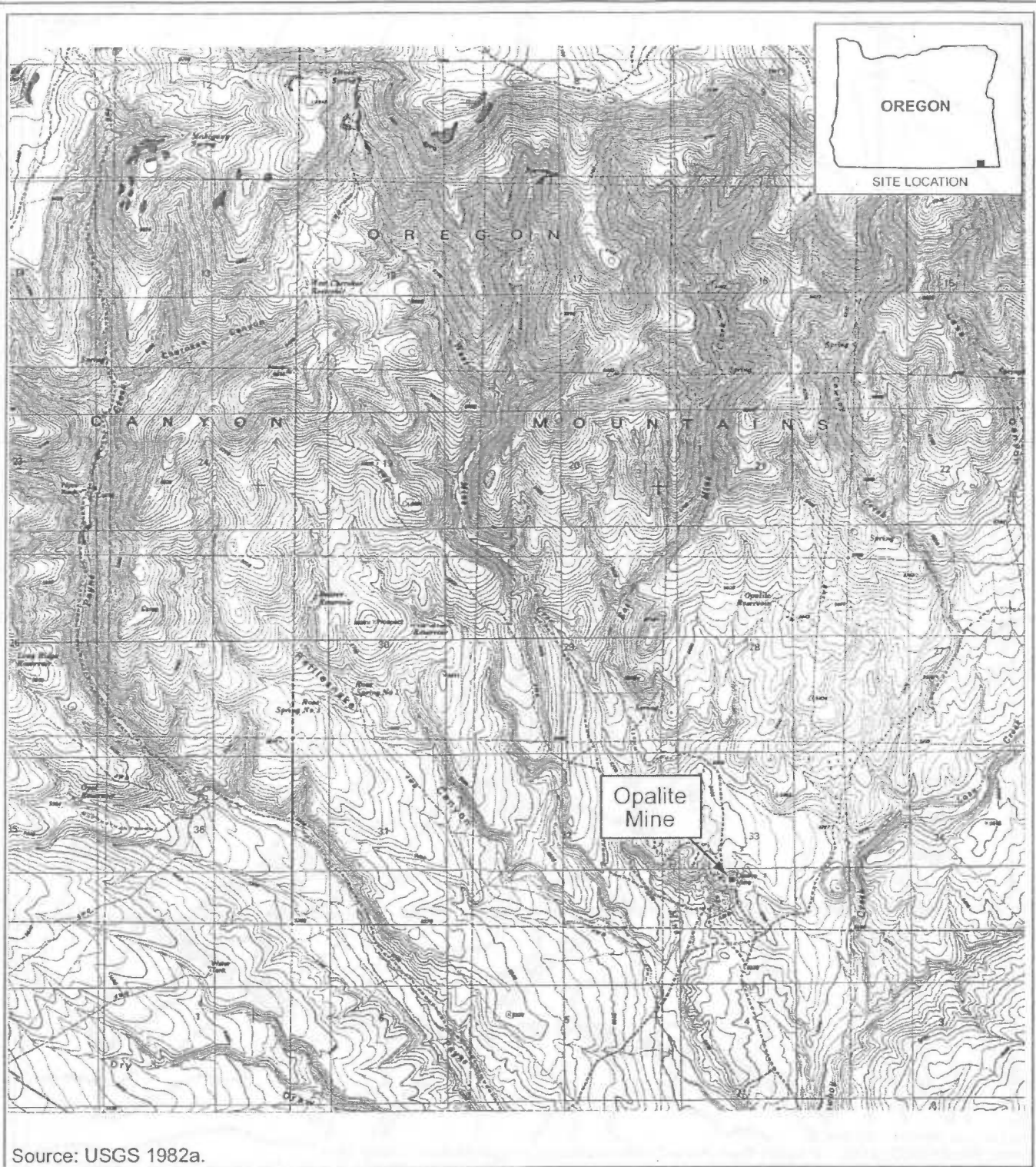
Source: USGS 1982a.

**Site Diagram
Bretz Mine SI
Malheur County, Oregon**

Figure
2-1

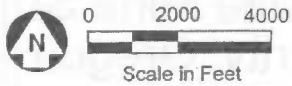
0 615 1230
Scale in Feet

X Mine Prospects
 Approximate Impoundment Area



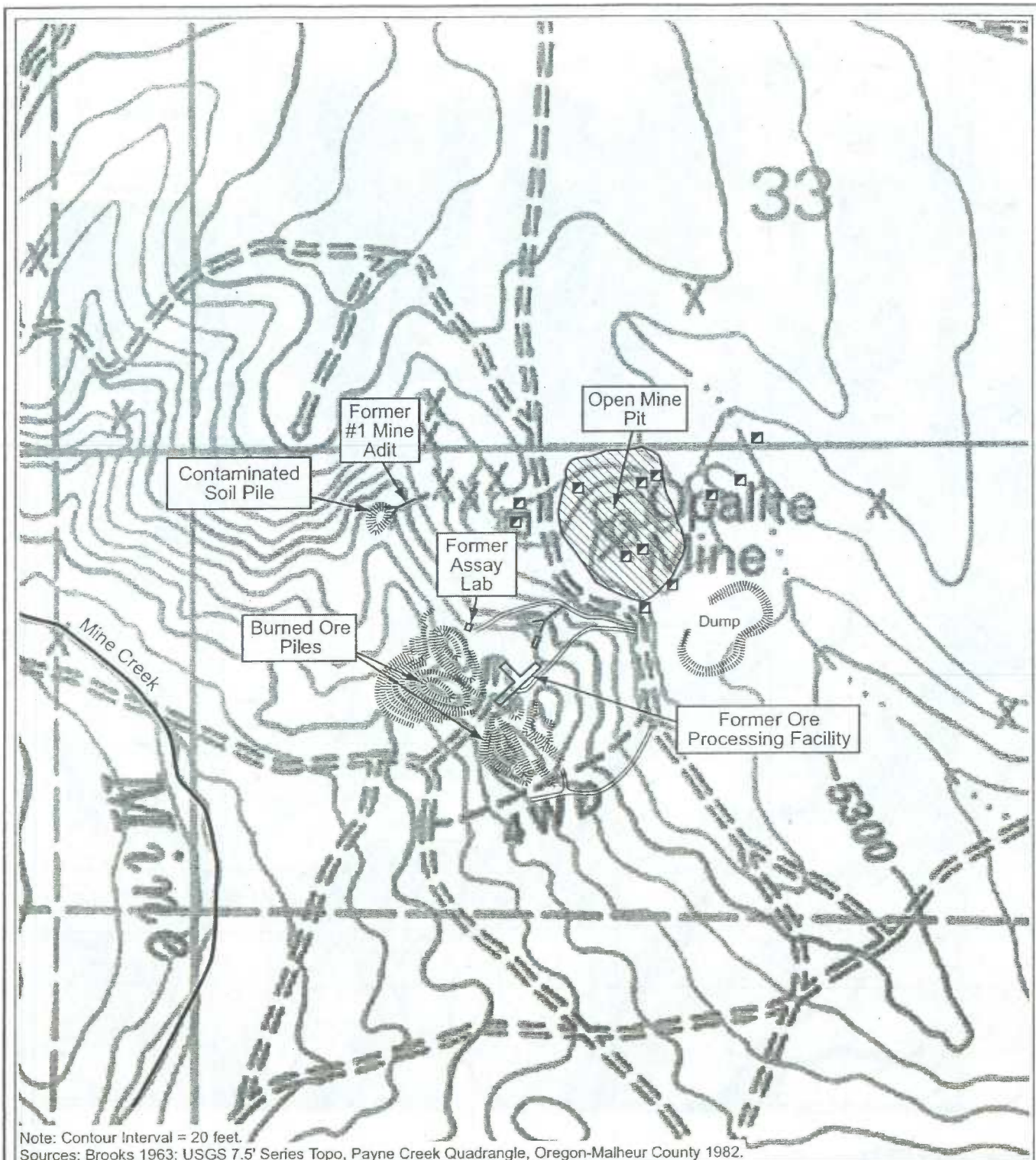
Source: USGS 1982a.

Site Location Map Opalite Mine Malheur County, Oregon

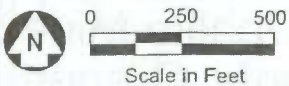


Figure

1-1



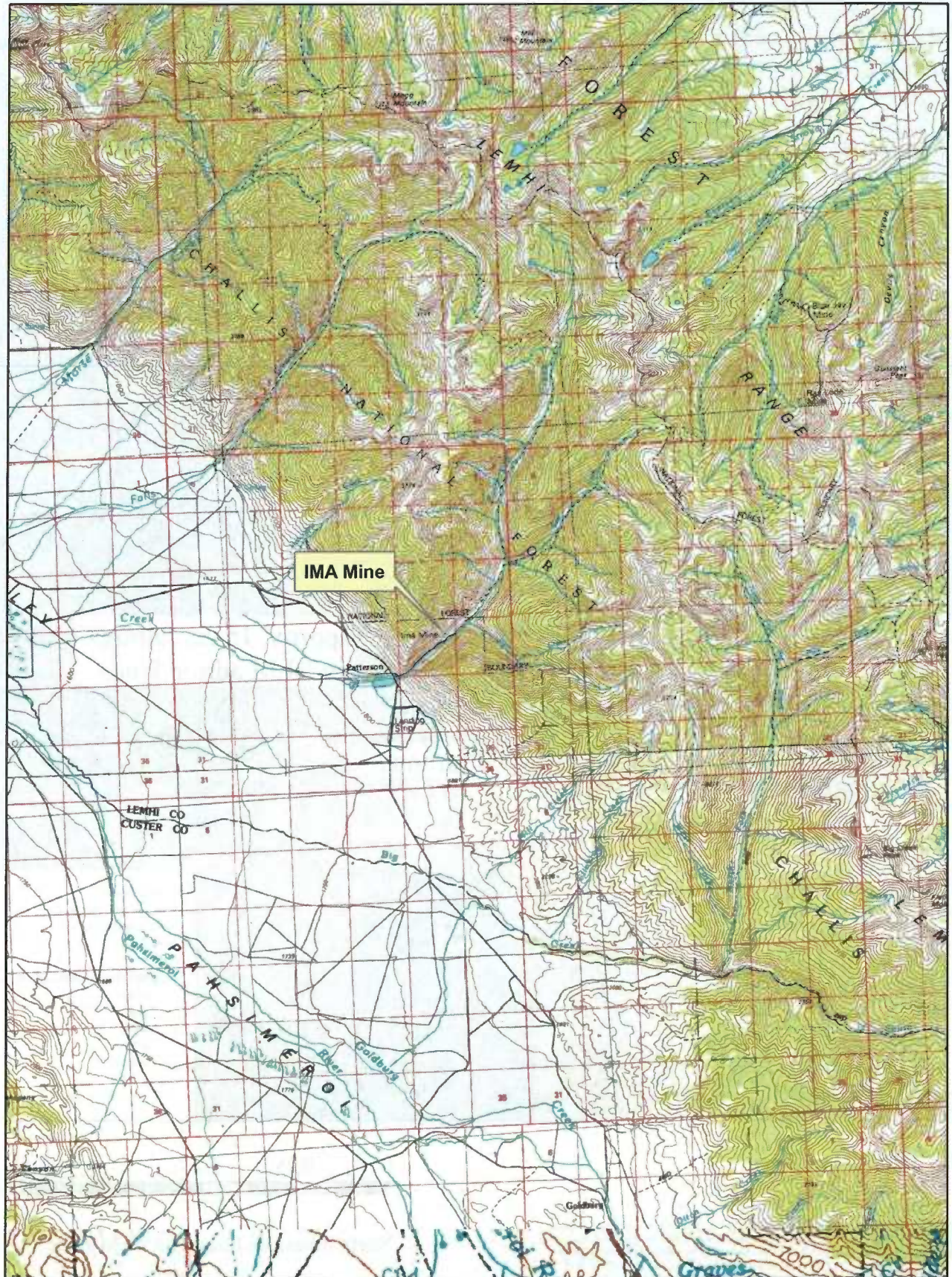
Site Diagram Opalite Mine Site Malheur County, Oregon



- Mine Adit
- Mine Shaft
- Building Ruins
- Perennial Stream



Figure
2-1





Map of IMA Mine Site



Original data was compiled at various scales from various sources. Spatial information may not meet Nation Mapping Accuracy Standards. The information may be updated without notification. no warranty is made by the Bureau of Land Management as to the accuracy, reliability or completeness of the data. The following cannot be made Section 508 compliant. For help with its data or information, please contact the BLM Idaho State Office Webmaster at 208-373-4000.

North American Datum 83 UTM Zone 11 North

1:23,000

1 inch equals 0.36 miles

APPENDIX B

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APPENDIX C

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List of Financial Documents Submitted to EPA by Settling Defendants

Bradley Mining Company

1. Letter from Jon Wactor to Kim Muratore, June 15, 2009, with enclosures
 - a. Attachment 1: EPA Policy on Superfund ATP Determination (Excerpt)
 - b. Attachment 2: Bradley Trust Financial Statement of Trusts
 - c. Attachment 3: Bradley Trust Tax Returns (federal and state), FY 2007
 - d. Attachment 4: Bradley Trust Bank Statements, FY 2008
 - e. Attachment 5: BMC Financial Statement for Businesses
 - f. Attachment 6: BMC Profit and Loss Statements, FY 2007 and 2008
 - g. Attachment 7: BMC Tax Returns (federal and state), FY 2007
 - h. Attachment 8: BMC Bank Statements, FY 2008
2. Letter from Jon Wactor to Kim Muratore, November 28, 2007, with enclosures (Ref. SDMS Doc. ID. 2151061)
3. Letter from Frederick W. Bradley to Kim Muratore, June 28, 2002 (Ref. SDMS Doc. ID. 162501)
4. Letter from Frederick W. Bradley to Kathi Moore, January 25, 2002, with enclosures (Ref. SDMS Doc. ID. 2008469)
 - a. P&L Year-to-Date Comparison, January through December 2000
 - b. Balance Sheet, As of December 31, 2000
 - c. P&L Year-to-Date Comparison, January 1 through September 4, 2001
 - d. Balance Sheet, As of September 4, 2001
5. Letter from Frederick W. Bradley to Kim Muratore, March 14, 2002, with enclosures (Ref. SDMS Doc. ID. 109293)
 - a. Letter from Frederick W. Bradley to Kathi Moore, January 25, 2002
 - b. Statement By Domestic Stock Corporation
 - c. Letter from Bill Jones, Secretary of State, to Bradley Mining Co., September 2, 2000
 - d. BMC Balance Sheet, as of September 4, 2001
 - e. BMC P&L Previous year Comparison, January through September 2001
 - f. BMC Balance Sheet, as of December 31, 2000
 - g. BMC Profit & Loss Statemet, as of December, January through December 2000
 - h. Stocks and Securities schedule
 - i. Handwritten note from Gail Webb To Rich, 1/29/02
 - j. IRS Form 1120, U.S. Corporation Income Tax Return, 1998
 - k. California Form 100, State Tax Return, 1998
 - l. IRS Form 1120, U.S. Corporation Income Tax Return, 1999
 - m. California Form 100, State Tax Return, 1999
 - n. IRS Form 1120, U.S. Corporation Income Tax Return, 2000
 - o. California Form 100, State Tax Return, 2000
 - p. Draft minutes of stockholders/directors meeting, March 10, 1998
 - q. Minutes of Stockholders/Directors Meeting, BMC, April 10, 1998

- r. Notice of Stockholders/Directors Meeting, August 30, 1999
 - s. Proxy for Stockholders/Directors Meeting, September 9, 1999
 - t. Notice of Stockholders/Directors Meeting, December 21, 2000
 - u. Proxy for Stockholders/Directors Meeting, December 28, 2000
 - v. P&L Previous Year Comparison, January through December 1999
 - w. BMC Balance Sheet, as of December 31, 1999
 - x. Facsimile Transmittal from Rick Bradley to Jack Wood, 4-12-01
 - y. Geothermal Lease and Agreement, April, 2001 (Township 13N Range 7W)
 - z. Fax Transmission cover sheet from Jerry Green to Jack Wood, 2-23-01
 - aa. Letter from Richard Ferreira to Jack Wood, February 23, 2001
 - bb. Term Sheet, February 23, 2001
 - cc. Email from Frederick W Bradley to Jack Wood, February 28, 2001
 - dd. Facsimile Transmittal from Rick Bradley to Jack Wood, 4-12-01
 - ee. Geothermal Lease and Agreement, April, 2001 (Township 13N Range 37W)
6. Response to 104(e) (Ref. SDMS Doc. ID No. 2141252):
- a. IRS Form 1120, U.S. Corporation Income Tax Return, 2006, 2005, 2004
 - b. IRS Form 8821, Tax Information Authorization
 - c. Profit & Loss Statement, January through September 2007
 - d. Profit & Loss Statement, January through December 2006
 - e. Profit & Loss Statement, January through December 2005
 - f. P&L Previous Year Comparison, January through December 2004
 - g. EPA Financial Statement for Businesses, signed November 13, 2007
 - h. Wells Fargo account number ***848, monthly statements ending February 5, 2007 through October 3, 2007
 - i. List of shareholders (January 4, 2005, excerpted from letter)
 - j. Memorandum of Option to Purchase Agreement, Yellow Pine Project, dated November 7, 2003
 - k. Mineral Lease Agreement and Option to Purchase, IMA Mine Contract, undated, unsigned
 - l. Mining Lease for Malheur County property, Tech Industries, Ltd., January 13, 2003
 - m. Insurance Policy information for Hartford No. 57 UUC KR3378
 - n. Insurance Policy information for Hartford No. 57 SMP GR6780
 - o. Insurance Policy information for Continental No. BOX 1 33720
 - p. Insurance Policy information for Fireman's Fund No. 81-08
7. Letter from Jon K. Wactor to Kim Muratore, November 28, 2007, with enclosures:
- a. BMC responses to EPA's information request
 - b. See Item 6, above (Ref. SDMS Doc. ID No. 2141252)
8. Letter from Jon Wactor to Kim Muratore, June 15, 2009, with enclosures:
- a. Attachment 1: EPA Policy on Superfund ATP Determination (excerpt)
 - b. Attachment 2: Bradley Trust Financial Statement of Trusts
 - c. Attachment 3: Bradley Trust Tax Returns, FY 2007 (federal and state)
 - d. Attachment 4: Bradley Trust Bank Statements, January through December 2008
 - e. Attachment 5: BMC Financial Statement for Businesses
 - f. Attachment 6: BMC Profit and Loss Statements, FY2007 and 2008

- g. Attachment 7: BMC Tax Returns, FY2007 (federal and state)
- h. Attachment 8: BMC Bank Statements, FY2008

Worthen Bradley Family Trust

- 9. Letter from Jon Wactor to Kim Muratore, dated June 15, 2009, with enclosures
 - a. Attachment 1: EPA Policy on Superfund ATP Determination (Excerpt)
 - b. Attachment 2: Bradley Trust Financial Statement of Trusts
 - c. Attachment 3: Bradley Trust Tax Returns (federal and state), FY 2007
 - d. Attachment 4: Bradley Trust Bank Statements, FY 2008
 - e. Attachment 5: BMC Financial Statement for Businesses
 - f. Attachment 6: BMC Profit and Loss Statements, FY 2007 and 2008
 - g. Attachment 7: BMC Tax Returns (federal and state), FY 2007
 - h. Attachment 8: BMC Bank Statements, FY 2008
- 10. Letter from Jon Wactor to Kim Muratore, dated December 14, 2007, with responses and enclosures (Ref. SDMS Doc. ID. 2151062 and 2141253)
 - a. Exhibit A: Judgment—Final Distribution (Judgment Settling Second and Final Account and Report of Executrix (Helen Pope Bradley), Allowing Extraordinary Compensation and of Final Distribution, (Estate of Worthen Bradley) filed October 15, 1963, with Schedules B, B-1, B-2)
 - b. Exhibit B: IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, 2004, 2005 and 2006 (incomplete—schedules missing)
 - c. Exhibit C: Income and Expense Statements, FY2003-2007
 - d. Exhibit D: Residuary Trust Account Statements, FY2003-2007
 - e. Exhibit F: Check Images – Trust Account, May 2007
 - f. Exhibit G: Order Settling First and final Report of Executor (Estate of Helen Pope Dowdell)
 - g. Exhibit H: Final Discharge and Order in (Estate of Helen Pope Dowdell)
- 11. Letter from Clay Bradley to Kim Muratore, dated June 8, 2002, with enclosures (Ref. SDMS Doc. ID. 162499)
 - a. Schedule of Principal Cash Receipts
 - b. IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, 1994
 - c. Last Will and Testament of Helen Pope Dowdell
 - d. Last Will and Testament of Worthen Bradley
- 12. Letter from Frederick W. Bradley to Kim Muratore, June 28, 2002 (Ref. SDMS Doc. ID. 162501)
- 13. Letter from Frederick W. Bradley to Kathi Moore, March 21, 2002, with enclosures (Ref. SDMS Doc. ID. 109297 and 162269)
 - a. IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, 1998, 1999, 2000
 - b. California Form 541, California Fiduciary Income Tax Return, 1998, 1999, 2000
 - c. Wedbush Morgan Securities account number ***303, monthly statements ending 01-31-02 and 02-28-02
 - d. Form 1099, for year 2001

- e. Statements of Income and Expenses, years ending December 31, 1998, 1999, 2000, 2001
- f. Eighteenth Account and Report of Trustee and Petition for Settlement Thereof, filed June 21, 1999
- g. Corpus Assets, December 31, 1998, 1999, 2000
- h. Changes-Principal Cash, years ending December 31, 1998, 1999, 2000
- i. Judgment Settling Eighteenth Account and Report of Trustee, filed August 12, 1999
- j. Nineteenth Account and Report of Trustee and Petition for Settlement Thereof, filed July 28, 2000
- k. Principal Cash Receipts and Disbursements, year ending December 31, 1999, 2000
- l. Judgment Settling Nineteenth Account and Report of Trustee, filed September 20, 2000
- m. Twentieth Account and Report of Trustee and Petition for Settlement Thereof, filed March 6, 2001
- n. Judgment Settling Twentieth Account and Report of Trustee, filed April 19, 2001
- o. List of Real Property Assessed Values
- p. Responses to Questions 3d and 3e
- q. Map of parcels (with marginalia)
- r. Judgment Settling Second and Final Account and Report of Executrix (Helen Pope Bradley), Allowing Extraordinary Compensation and of Final Distribution, (Estate of Worthen Bradley) filed October 15, 1963, with Schedules B, B-1, B-2

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APPENDIX D

AFFIDAVIT OF ENGINEER

I, Willard R. Gillette, being Assistant Area Road Engineer Sacramento Area Office of the Bureau of Indian Affairs, do hereby certify that this map was prepared from a survey made under my supervision during June, 1970, and to the best of my knowledge and belief correctly delineates the road right of way for Route No. S-120 Sulphur Bank Indian Reservation, located in Sections 5 & 6, T.13N., R.7W., M.D.B. & M. County of Lake, State of California.

Date: 8-1-1970
 Assistant Area Road Engineer

ACKNOWLEDGMENT

County of Sacramento }
 State of California }

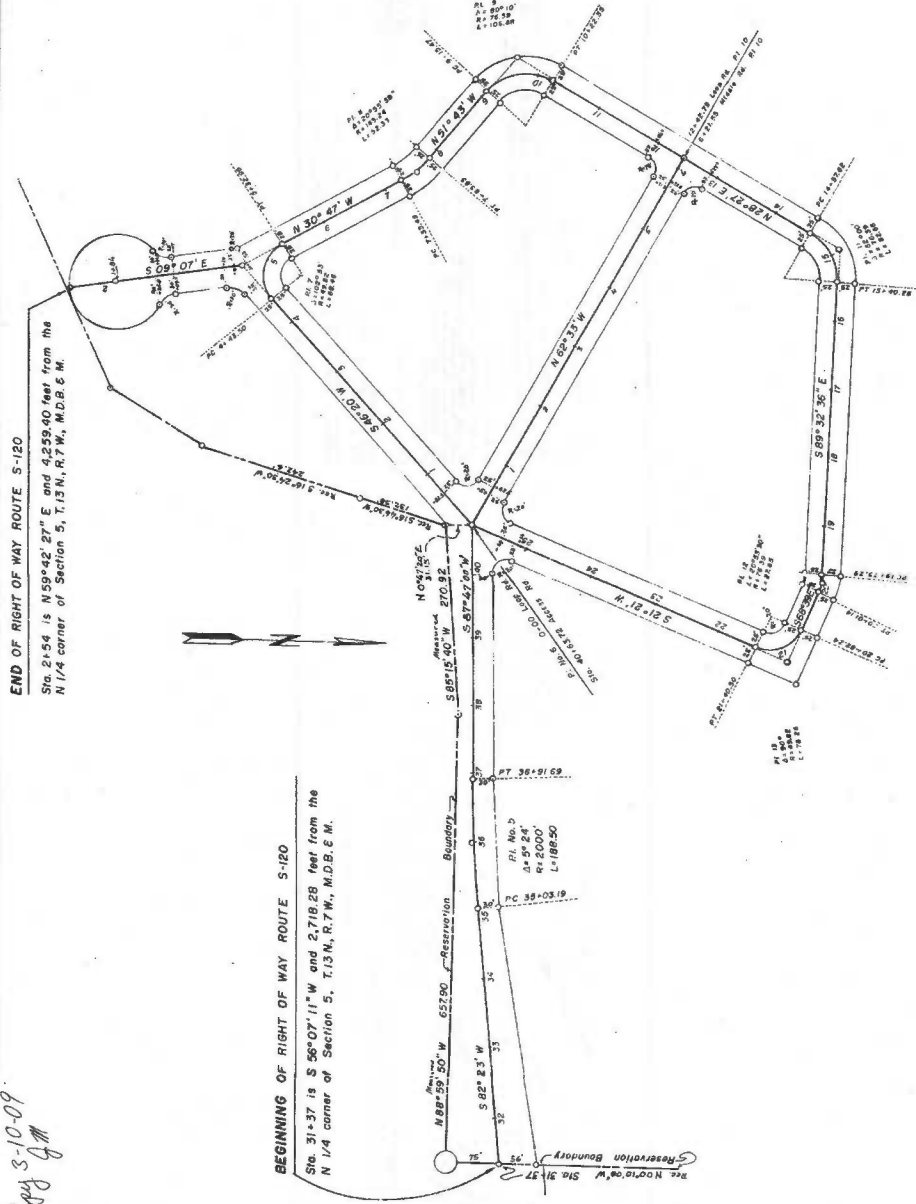
Subscribed and Sworn to, before me this 1st day of August, 1970
 My Commission Expires 1-1-1971
 NOTARY PUBLIC

CERTIFICATE OF APPLICANT

I, E. Wayne Chapman, Area Road Engineer Sacramento Area Office of the Bureau of Indian Affairs, hereinafter designated the Applicant, state that to the best of my knowledge and belief the road right of way is correctly represented hereon for Route No. S-120 Sulphur Bank Indian Reservation, having a length of 4,391.75 feet, and contains an area of 5.72 Acres that this map is hereby adopted as the map of definite location, that application is made in the name of the United States for the benefit of the Bureau of Indian Affairs, for such right of way on the Sulphur Bank Indian Reservation, County of Lake, State of California, in accordance with the provisions of the Act of February 5, 1948 (62 Stat. 17) (25 CFR 161)

E. Wayne Chapman
 APPLICANT

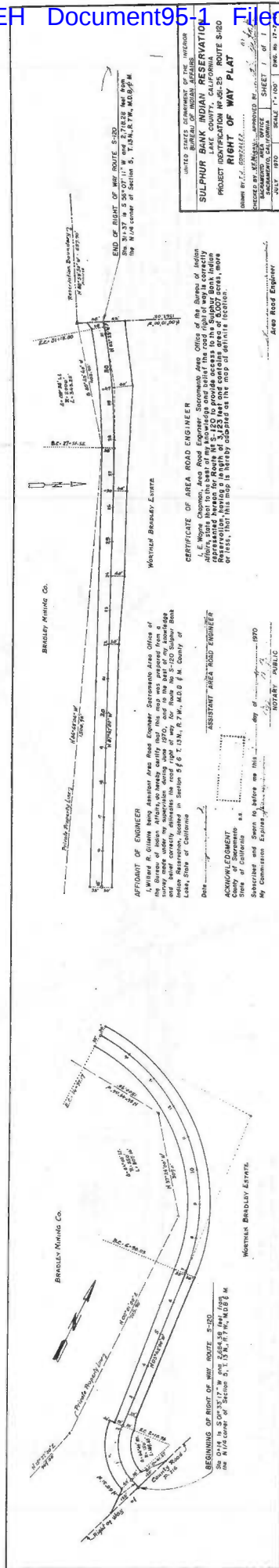
UNITED STATES DEPARTMENT OF THE INTERIOR	
BUREAU OF INDIAN AFFAIRS	
SULPHUR BANK INDIAN RESERVATION	
LAKE COUNTY, CALIFORNIA	
PROJECT No. J51-411 ROUTE S-120	
RIGHT OF WAY PLAT	
DRAWN BY: T. GONZALEZ	
CHECKED BY: T. GONZALEZ	APPROVED BY: _____
SACRAMENTO AREA OFFICE	SHEET 1 OF 1
SACRAMENTO, CALIFORNIA	SCALE 1" = 100'
AUGUST 3, 1970	DWG. No. 17-7-48



END OF RIGHT OF WAY ROUTE S-120
 Sta. 2+54 is N 59° 42' 27" E and 4,259.40 feet from the N 1/4 corner of Section 5, T.13N., R.7W., M.D.B. & M.

BEGINNING OF RIGHT OF WAY ROUTE S-120
 Sta. 31+37 is S 55° 07' 11" W and 2,718.28 feet from the N 1/4 corner of Section 5, T.13N., R.7W., M.D.B. & M.

Copy 3-10-09
 JRM



AFFIDAVIT OF ENGINEER
 I, **WILLIAM R. GILLES**, being Assistant Area Road Engineer, Sacramento Area Office of the Bureau of Inland Affairs, do hereby certify that the map was prepared from a true and correct copy of the original map and that the same is a true and correct copy of the original map and that the same is a true and correct copy of the original map and that the same is a true and correct copy of the original map.

ASSISTANT AREA ROAD ENGINEER
 State of California
 County of Sacramento
 I, **WILLIAM R. GILLES**, do hereby certify that the map was prepared from a true and correct copy of the original map and that the same is a true and correct copy of the original map and that the same is a true and correct copy of the original map.

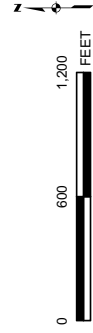
CERTIFICATE OF AREA ROAD ENGINEER
 I, **E. WOOD CHAMBERLAIN**, Area Road Engineer, Sacramento Area Office of the Bureau of Inland Affairs, state that to the best of my knowledge and belief the road shown on the attached map is a true and correct copy of the original map and that the same is a true and correct copy of the original map and that the same is a true and correct copy of the original map.

AREA ROAD ENGINEER
 State of California
 County of Sacramento
 I, **E. WOOD CHAMBERLAIN**, do hereby certify that the map was prepared from a true and correct copy of the original map and that the same is a true and correct copy of the original map and that the same is a true and correct copy of the original map.

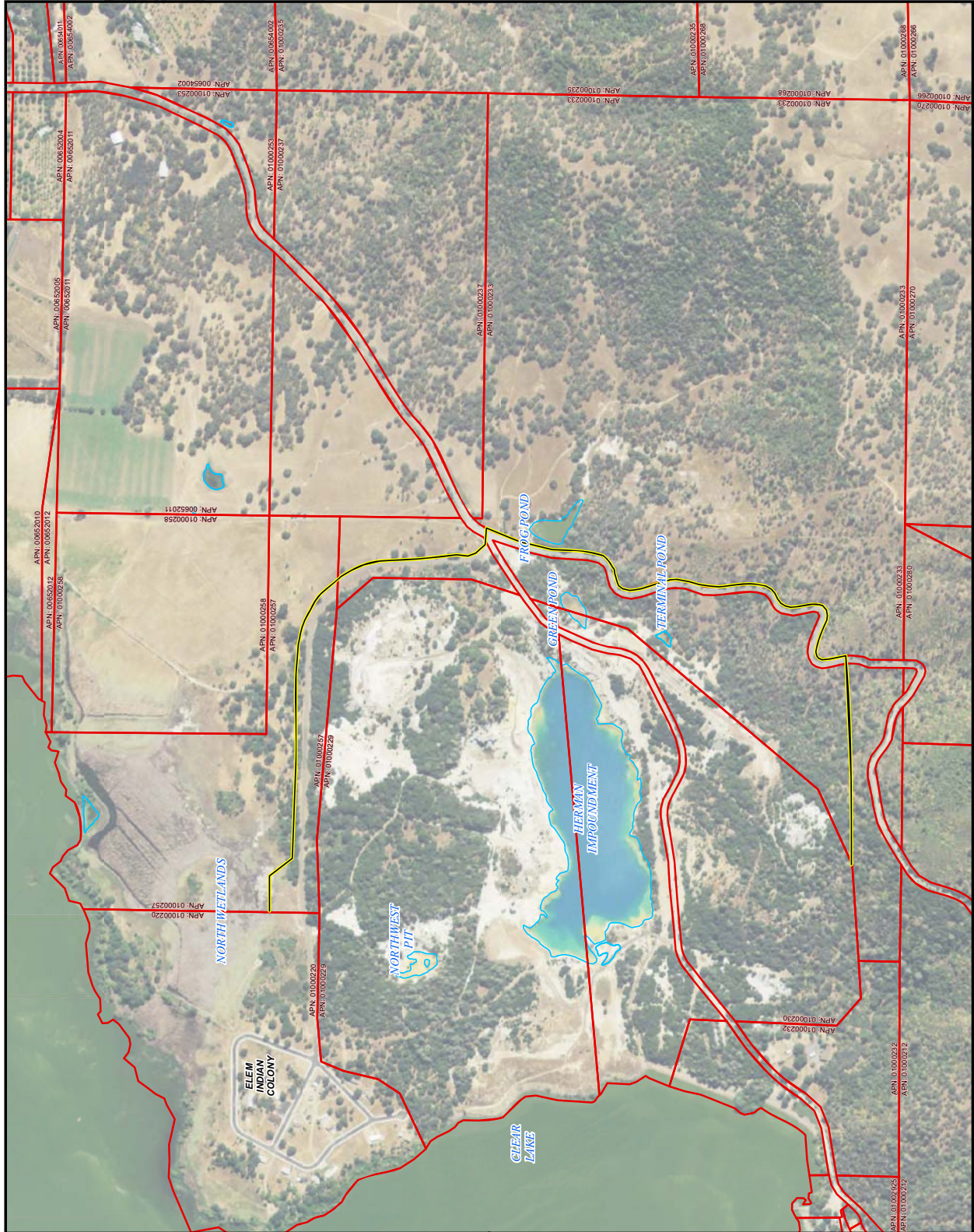
UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF INLAND AFFAIRS
 SACRAMENTO, CALIFORNIA
SULPHUR LAKE COUNTY, CALIFORNIA
 PROJECT IDENTIFICATION NUMBER: ROUTE 5120
RIGHT OF WAY PLAN
 DRAWN BY: **W. R. GILLES**
 CHECKED BY: **E. W. CHAMBERLAIN**
 DATE: **7-1-1925** PAGE NO. **21-22**

APPENDIX E

- LEGEND
- PROPERTY BOUNDARIES
- REVISED PARCEL BOUNDARY
- MINE SITE SURFACE WATER



APPENDIX E
APPROXIMATE REVISED BOUNDARIES
FOR APNs 01000233 AND 01000257
SULPHUR BANK MERCURY MINE



APPENDIX F

**United States of America v.
Bradley Mining Company, et al.,
CONSENT DECREE**

**APPENDIX F
Redevelopment Trust Agreement**

The following form of agreement comprises the Redevelopment Trust Agreement.

THE REDEVELOPMENT TRUST AGREEMENT

The Bradley Mining Company and Frederick Bradley, in his representative capacity as Trustee of the Worthen Bradley Family Trust (jointly, “Grantor”), pursuant to the terms of the Consent Decree in United States of America v. Bradley Mining Company, et al., Case No. 3:08-CV-03968 TEH (N.D. Cal.) (the “Consent Decree”), as of this _____ day of _____, 201_, hereby declares Tom Connolly to be Trustee (the “Trustee”), and Tom Connolly agrees to act as Trustee and to hold and dispose of property transferred to the Trustee pursuant to the terms of the Consent Decree and all additions thereto in accordance with the terms of this Trust Agreement.

**ARTICLE I
DEFINITIONS**

1.01 Capitalized Terms. For all purposes of this Trust, the following terms shall have the meanings set forth below:

“Authorized Representatives” shall mean those individuals or their designated successors who have the authority for all purposes of this Trust Agreement to take any action or give any approval required herein for any party or entity.

“Consent Decree” shall mean the Consent Decree in United States of America v. Bradley Mining Company, et al., Case No. 3:08-CV-03968 TEH (N.D. Cal.).

“Elem Tribe” shall mean the Elem Pomo Indian Tribe.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

“Excised Lands” shall be those areas of Parcels 33 and 57 that are not transferred by the Redevelopment Trust to the Elem Tribe due to the presence of hazardous substances as shown

and delineated generally in the map attached to the Consent Decree as Appendix E, and subject to modification based on the results of the environmental assessment to be performed by McGinnis & Associates under Paragraph 25 of the Consent Decree.

“Net Lease Proceeds” shall mean the proceeds that the Redevelopment Trust receives from the lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, net of the usual and customary costs of leasing and net of any fees and expenses as set forth in Paragraph 3.01(g), (h), (i), and (j) of this Redevelopment Trust Agreement.

“Net Sales Proceeds” shall mean the proceeds that the Redevelopment Trust receives from the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, net of the usual and customary costs of sale and net of any fees and expenses as set forth in Paragraph 3.01(g), (h), (i), and (j) of this Redevelopment Trust Agreement.

“Parcel 24” shall mean Lake County Assessor Parcel No. 010-029-24.

“Parcel 25” shall mean Lake County Assessor Parcel No. 010-029-25.

“Parcel 29” shall mean Lake County Assessor Parcel No. 010-002-29.

“Parcel 30” shall mean Lake County Assessor Parcel No. 010-002-30.

“Parcel 32” shall mean Lake County Assessor Parcel No. 010-002-32.

“Parcel 33” shall mean Lake County Assessor Parcel No. 010-002-33.

“Parcel 39” shall mean Lake County Assessor Parcel No. 010-002-39.

“Parcel 57” shall mean Lake County Assessor Parcel No. 010-002-57.

“Parcel 58” shall mean Lake County Assessor Parcel No. 010-002-58.

“Parcel 81” shall mean Lake County Assessor Parcel No. 010-002-81.

“Parcel 83” shall mean Lake County Assessor Parcel No. 010-002-83.

“Site” shall mean the Sulphur Bank Mercury Mine Superfund Site in Lake County, California, which includes all or portions of Lake County Assessor’s Parcel Nos. 010-002-20 (the Elem Indian Colony), 010-029-25, 010-002-29, 010-002-30, 010-002-32, 010-002-33, 010-002-57, and 010-002-58, Clear Lake, and BIA Road 120.

“Trust Estate” shall mean all right, title, and interest of the Trustee in and to the Trust

Fund and the Trust Property as hereinafter defined, including, without limitation, any income or profits derived therefrom.

“Trust Fund” shall mean any and all personal property of this Trust, including, without limitation, funds and other liquid assets contributed by the Grantor, funds and other liquid assets contributed by any other person or entity, funds retained from Net Sales Proceeds and Net Lease Proceeds, and any interest or other income earned thereon, but shall not include any Trust Property as hereinafter defined.

“Trust Property” shall mean any and all real property contributed to this Trust, but does not include the proceeds of any sale or other disposition of such real property or any other personal property held by the Trustee.

“Trustee” shall mean Tom Connolly or his successor, as the then serving trustee of the Trust.

1.02 Incorporation of Certain Definitions. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Consent Decree.

ARTICLE II **NAME AND PURPOSE OF TRUST**

2.01 Name. This Trust shall be known as the “Redevelopment Trust” (hereinafter sometimes referred to as the “Trust”).

2.02 Trust Purpose. The purpose of this Trust is to:

(a) act for the benefit of the United States by:

(i) receiving and holding title to Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, with the primary objective of managing the parcels consistent with EPA’s long-term remedial objectives for the Site and, after consulting with EPA and in accordance with EPA’s written instructions, to take further actions regarding all or a portion of the parcels, such as, but not limited to, selling, leasing, developing, transferring or holding in trust for a new beneficiary in accordance with the requirements of the Consent Decree; (ii) cooperating fully with EPA in the implementation of response actions at the Site and not interfering with such response actions, and providing access to the Site as set forth in Section XV (Access and Institutional Controls) of the Consent Decree; (iii) subject to EPA’s approval, marketing Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, for sale, lease, and redevelopment; (iv) subject to EPA’s approval, maximizing the proceeds of the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands; (v) disbursing the Net Sale Proceeds and Net Lease Proceeds from Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, and assets of the Redevelopment Trust in accordance with applicable

provisions of the Consent Decree and the Redevelopment Trust Agreement; and (vi) providing annual accounting to EPA Region IX until Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands are sold and thereafter providing a final accounting to EPA Region IX of all earnings, income, and disbursements from the estate of the Redevelopment Trust; and

(b) act for the benefit of the Elem Tribe by receiving and holding title to Parcels 33, 39, 57, 58, and 81 until the parcels are transferred in fee to the Elem Tribe without the Excised Lands.

ARTICLE III **DUTIES OF THE TRUSTEE**

3.01 Trust Property. The Trustee shall have the following obligations:

(a) To receive, hold, manage, and maintain Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, with the primary objective of managing the parcels consistent with EPA's long-term remedial objectives for the Site and, after consulting with EPA and in accordance with EPA's written instructions, to take further actions regarding all or a portion of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, such as, but not limited to, selling, leasing, developing, transferring or holding in trust for a new beneficiary in accordance with the requirements of the Consent Decree;

(b) To record a notice of the entry of the Consent Decree regarding Parcels 25, 29, 30, and 32, and the Excised Lands with the Recorder's Office, Lake County, State of California. The notice shall provide that any person who subsequently acquires any interest in Parcels 25, 29, 30, 32, and the Excised Lands or any portion thereof shall be subject to the provisions of Sections 101(40) and 107(r) of CERCLA, 42 U.S.C. §§ 9601(40) and 9607(r);

(c) To receive, hold, manage, and maintain Parcels 33 and 57 until: (i) the Excised Lands are appended to Parcels 29 and 30; and (ii) the Redevelopment Trust is instructed in writing by the Elem Tribe to transfer the newly reconfigured Parcels 33 and 57 to the Elem Tribe or to another trust or entity identified by the Elem Tribe; provided, however, that the Elem Tribe will use its best efforts to accomplish transfers of Parcels 33 and 57 from the Redevelopment Trust to the Elem Tribe or to another trust or entity identified by the Elem Tribe by no later than one year after the Effective Date of the Consent Decree, unless the United States and the Elem Tribe mutually agree to extend this period;

(d) To receive, hold, manage, and maintain Parcels 39, 58, and 81 until the Redevelopment Trust is instructed in writing by the Elem Tribe to transfer Parcels 39, 58, and 81 to the Elem Tribe or to another trust or entity identified by the Elem Tribe; provided, however, that the Elem Tribe will use its best efforts to accomplish transfers of Parcels 39, 58, and 81 from the Redevelopment Trust to the Elem Tribe or to another trust or entity identified by the Elem

Tribe by no later than one year after the Effective Date of the Consent Decree, unless the United States and the Elem Tribe mutually agree to extend this period;

(e) To exercise due care at Parcels 25, 29, 30, and 32, including the Excised Lands, with respect to Existing Contamination, to comply with all applicable local, State, and federal law and regulations, to cooperate fully with EPA in the implementation of response actions at the Site and not interfere with such response actions, to comply with all restrictions required by EPA, to record any Proprietary Controls at the request and direction of EPA prior to transferring any of these parcels, and to provide access to the parcels as set forth in Section XV (Access and Institutional Controls) of the Consent Decree;

(f) To deposit, manage, and invest the funds paid into the Trust Fund, and disburse funds from such account(s) for the purposes set forth in the Consent Decree and this Redevelopment Trust Agreement;

(g) To pay all applicable real estate and transfer taxes on the Covered Parcels, file all applicable federal and state tax returns, and pay all applicable federal and state taxes associated with the Trust and the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands;

(h) Subject to EPA's approval, to locate purchasers or lessees who will provide maximum value for, and will substantially reuse Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, consistent with applicable zoning and other valid land use ordinance and regulations, to negotiate the terms of the sale and transfer or lease of the parcels, and to sell and convey or lease the parcels;

(i) Subject to EPA's approval, to retain a commercial real estate broker on customary and reasonable terms to assist in the marketing and sale or lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands;

(j) Consistent with the fundamental purposes of the Redevelopment Trust as set forth above in subparagraph a. and other applicable requirements of the Consent Decree, and subject to the approval of EPA, to take whatever actions at whatever times are commercially reasonable to maximize the net proceeds of the sale or lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands;

(k) To distribute the assets of the Redevelopment Trust following the sale or lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, in accordance with Article IV of this Redevelopment Trust Agreement and Paragraph 23 of the Consent Decree;

(l) To provide EPA Region IX an accounting on an annual basis, and a final accounting within 30 days after the sale or conveyance of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, of all Redevelopment Trust assets, earnings, and disbursements;

(m) To employ all reasonable measures to prevent unauthorized entry upon or use of the Trust Property in its possession or control and to provide for site maintenance and utilities, if any;

(n) To insure the Trust Property against loss due to casualty or third party liability;
and

(o) To comply with all relevant Sections of the Consent Decree, and EPA shall have the right and power to compel the Trust to so comply.

3.02 Trust Fund. The Trustee shall apply all of the Trust Fund toward the duties prescribed by Section 3.01 for as long as the Trust Property remains in its possession.

3.03 Application for Tax Abatements. The Trustee shall make all necessary applications for abatements from property taxation and provide such additional information to Lake County, California (“Assessor”) or other appropriate local or state taxing authorities as is necessary to assure that the assessed valuation of the Trust Property is fair and reasonable.

ARTICLE IV
SALE OR LEASE OF TRUST PROPERTY, DISTRIBUTION OF
NET SALES PROCEEDS, NET LEASE PROCEEDS, AND
TRUST FUND, AND TERMINATION OF TRUST

4.01 Sale and Conveyance or Lease of Trust Property.

(a) The Trustee is authorized to sell and convey or lease Parcels 24 and 83 without any environmental conditions attached to the sale or lease.

(b) After consulting with EPA and in accordance with EPA’s written instructions, the Trustee is authorized to sell and convey Parcels 25, 29, 30, and 32, and the Excised Lands to any person or entity (a “Successor in Property Interest”) in accordance with this subparagraph (b). For Parcels 25, 29, 30, and 32, and the Excised Lands, the Trust shall, within thirty (30) days after the latter of the execution of this Trust Agreement or the transfer of Parcels 25, 29, 30, and 32, and the Excised Lands to the Trust, record a notice of the entry of this Consent Decree, with the Recorder’s Office, Lake County, State of California. Such notice shall provide that any person who subsequently acquires any interest in Parcels 25, 29, 30, and 32, and the Excised Lands, or any portion thereof shall be subject to the provisions of Sections 101(40) and 107(r) of CERCLA, 42 U.S.C. §§ 9601(40) and 9607(r). Thereafter, and continuing until EPA issues a notice of completion for the final remedy for the Site, each deed, title, or other instrument conveying an interest in Parcel 25, 29, 30, and 32, and the Excised Lands shall contain a notice stating that Parcels 25, 29, 30, and 32, and the Excised Lands are subject to the Consent Decree

and shall reference the location of the Consent Decree. Within ten (10) Days of recording the notice, the Trustee shall provide to EPA a conformed copy of the recorded notice. Any Successor in Property Interest must certify in writing to EPA that it has met and will meet the requirements for a “bona fide prospective purchaser” as set forth in CERCLA Section 101(40), 42 U.S.C. § 9601(40). EPA will provide the Trustee and listing agent with a letter describing what steps a purchaser must take to satisfy the reasonable steps requirements for a bona fide prospective purchaser under CERCLA Sections 101(40) and 107(r), 42 U.S.C. §§ 9601(40) and 9607(r). Any such letter will be consistent with policy and guidance issued by EPA, including the “Policy on the Issuance of Comfort/Status Letters,” 62 Fed. Reg. 2,624 (1997) and the “Interim Guidance Regarding Criteria Landowners Must Meet In Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability” (March 2003). Any such letter will include limitations recommended by EPA’s applicable policies and guidance.

(c) After consulting with EPA and in accordance with EPA’s written instructions, the Trustee is authorized to lease Parcels 25, 29, 30, and 32, and the Excised Lands to any person or entity. At the time of leasing Parcels 25, 29, 30, and 32, and the Excised Lands, the Trustee shall provide the lessee with a copy of the recorded notice and a copy of EPA’s letter referred to in Section 4.01(b). Any lessee must certify in writing to EPA that it has met and will meet the requirements for a “bona fide prospective purchaser” as set forth in CERCLA Section 101(40), 42 U.S.C. § 9601(40).

4.02 Distribution of Trust Assets.

(a) Within fifteen (15) Days after the closing upon the sale of any of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, the Redevelopment Trust shall retain 10 percent of the Net Sales Proceeds to be used solely for the purposes provided in the Consent Decree and this Redevelopment Trust Agreement, and shall thereafter disburse: (a) the remainder of the Net Sale Proceeds from the sale of any of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, to EPA’s Sulphur Bank Mercury Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the Hazardous Substance Superfund; and (b) to the Trustee of the Redevelopment Trust any fee as set forth in Section 8.04 and any expenses of administering the Redevelopment Trust or maximizing the net proceeds of the sale of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, as authorized pursuant to the terms of this Redevelopment Trust Agreement or the Consent Decree.

(b) Within fifteen (15) Days after the Annual Accounting pursuant to Section 7.01, if Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands have been leased in the previous year, the Redevelopment Trust shall retain 10 percent of the Net Lease Proceeds to be used solely for the purposes provided in the Consent Decree and the Redevelopment Trust Agreement, and shall thereafter disburse: (a) the remainder of the Net Lease Proceeds from the lease of any of Parcels

24, 25, 29, 30, 32, and 83, and the Excised Lands, to EPA's Sulphur Bank Mercury Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the Hazardous Substance Superfund; and (b) to the Trustee of the Redevelopment Trust any fee as set forth in Section 8.04 and any expenses of administering the Redevelopment Trust or maximizing the net proceeds of the lease of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, as authorized pursuant to the terms of this Redevelopment Trust Agreement or the Consent Decree.

4.03 Termination.

(a) At such time as the Trustee has transferred Parcels 33, 39, 57, 58, and 81 to the Elem Tribe or to another trust identified by the Elem Tribe as provided in Section 3.01, this Trust shall terminate as to the Elem Tribe.

(b) At such time as all of Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, has been sold and conveyed as provided in Section 4.01, the Trust Assets have been distributed in accordance with Section 4.02, a final accounting has been provided pursuant to Section 7.02, and the Trustee has complied with all of the relevant provisions of this Redevelopment Trust Agreement and the Consent Decree, this Trust shall terminate.

ARTICLE V
RETENTION OF PROFESSIONAL AND OTHER SERVICES

5.01 Accountants. The Trustee may employ an independent certified public accounting firm or individual to complete federal or state tax returns for this Trust (the "accountants").

5.02 Retention and Removal of Other Professional and Employee Services. Subject to the approval of EPA, the Trustee may employ such attorneys, accountants, custodians, consultants, engineers, surveyors, contractors, clerks, investment counsel and agents or employees, and make such payments therefor as the Trustee may deem necessary and commercially reasonable for the implementation of the purposes of this Trust.

ARTICLE VI
TRUSTEE'S POWERS

The Trustee shall have, in addition to those powers specified elsewhere herein and the general powers of the office, the following powers, which powers shall be exercised in a fiduciary capacity, in the best interest of this Trust, and in the sole discretion of the Trustee unless otherwise specified:

6.01 Payment of Expenses of Administration. To incur and pay any and all customary and commercially reasonable charges, taxes, and expenses upon or connected with this Trust in the discharge of its fiduciary obligations.

6.02 Retention of Property. Unless otherwise instructed in writing by: (i) EPA as to Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, and (ii) the Elem Tribe as to Parcels 33, 39, 57, 58, and 81, to hold and retain all or any part of the Trust Property and the Trust Fund in the form in which the same may be at the time of the receipt by the Trustee, as long as the Trustee shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

6.03 Preservation of Principal. Notwithstanding any other provision in this Trust, to at all times hold, manage, and invest the assets of the Trust Fund in a manner designed to preserve the principal of the Trust Fund and, consistent with preservation of the principal of the Trust Fund, to maximize the principal and income derived therefrom, for the purposes of this Trust.

6.04 Investment of Trust Fund. To invest and reinvest all or any part of the Trust Fund (including any undistributed income therefrom) as the Trustee deems advisable, except that such investments shall be limited to investments in United States direct obligations, obligations guaranteed by agencies of the United States government, common trust funds or mutual funds that invest in United States direct or guaranteed obligations, or bank accounts or certificates of deposit to the extent such are insured by the federal government. In all cases, however, the total investments must be sufficiently liquid to enable the Trustee to fulfill the purposes of this Trust and to satisfy obligations as they become due. Nothing in this Section 6.04 shall be construed as authorizing the Trustee to carry on any business or to divide the gains therefrom. The sole purpose of this Section 6.04 is to authorize the investment of the Trust Fund or any part thereof as may be reasonably prudent pending use of the Trust Fund for the purposes of this Trust.

6.05 Management of Trust Estate. Without any business objective, and as may be incidental or advisable in connection with the purposes of this Trust as set forth in Section 2.02, to sell, exchange, partition or otherwise dispose of all or any part of the Trust Fund at public or private sale, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as it shall determine.

6.06 Extension of Obligations and Negotiation of Claims. To renew or extend the time of payment of any obligations, secured or unsecured, payable to or by this Trust, for as long a period or periods of time and on such terms as the Trustee shall determine; and to adjust, settle, compromise, abandon, contest, and arbitrate claims or demands in favor of or against this Trust, including claims for taxes, upon such terms as it deems advisable.

6.07 Location of Assets. To hold any property belonging to the Trust at any place in the United States.

6.08 Authority to Represent Trust Before Agencies. To represent this Trust with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority that has authority or attempts to exercise authority over any matter that concerns this Trust.

6.09 Powers Regarding Real Estate. Subject to the provisions of the Consent Decree and other provisions of this Trust, including without limitation any required approvals, and unless otherwise instructed in writing by: (i) EPA as to Parcels 24, 25, 29, 30, 32, and 83, and the Excised Lands, and (ii) the Elem Tribe as to Parcels 33, 39, 57, 58, and 81, the Trustee may retain all or any part of any real estate (or interest therein) that becomes part of the Trust Property (the “real estate”) for such period as the Trustee deems advisable and shall pay all taxes and assessments on the real estate, maintain it and insure it against risks in such amounts as the Trustee deems advisable and in such amounts as are approved by the EPA (which approval shall not be unreasonably withheld). In addition to all other powers conferred by law or other provisions of this Trust, and also subject to the provisions of the Consent Decree and the other provisions of this Trust, the Trustee shall have the following powers, which may be exercised without court approval:

- (a) To grant options and make other contracts such as leases concerning the real estate (whether or not extending beyond the term of any trust);
- (b) To subdivide the real estate and dedicate streets or other ways for public use;
- (c) To impose easements or other restrictions;
- (d) To establish reserves for depreciation, taxes, insurance or other purposes as the Trustee deems advisable;
- (e) To execute and deliver all appropriate instruments; and
- (f) To record in the Recorder’s Office for Lake County, California, any instrument, including any certificate acknowledged by the Trustee as to any fact concerning the real estate; and any person without actual knowledge to the contrary may rely conclusively on the genuineness of any such instrument and on the correctness of any such certificate.

No person dealing with the real estate shall be required to see to the application of any money or property delivered to the Trustee, or to see that the terms and conditions of this Trust have been complied with. Every instrument executed or action taken by the person or entity appearing to be the Trustee shall be conclusive evidence that this Trust was in full force and effect when the

instrument was delivered or the action was taken; that such person or entity was the Trustee; and that such instrument or action was valid and legally binding.

6.10 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers until such time as the entire principal of, and income from, the Trust Fund has been actually distributed by the Trustee and all Trust Property has been sold or otherwise disposed of.

6.11 Reliance of Purchasers and Others. No license of court shall be requisite to the validity of any transaction entered into by the Trustee. No purchaser, transferee, or lender shall be under any obligation to see to the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, deed, or other instrument or document executed or action taken by the Trustee or any successor or additional Trustee, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect and that such instrument or document or action is valid, binding and legally enforceable. Any person dealing with the Trust Estate or the Trustee may always rely without inquiry on a certificate signed as aforesaid as to who is the Trustee or Trustees or the beneficiaries hereunder, or as to the authority of the Trustee to act, or as to the existence or nonexistence of any fact or facts that constitute conditions precedent to acts by the Trustee or that are in any other manner germane to the affairs of the Trust.

ARTICLE VII **ACCOUNTS**

7.01 Annual Accounting. Trustee shall provide an accounting of all assets, income, earnings, and disbursements of assets of Trust Fund assets or Trust Property to EPA on an annual basis within forty-five (45) days after the end the calendar year.

7.02. Final Accounting. Trustee shall provide a final accounting to EPA, with copies of a closing binder including all documents pertaining to the sale or conveyance of all Trust Property, within thirty (30) days after the closing upon such sale or conveyance.

ARTICLE VIII **CONDITIONS OF TRUSTEE'S OBLIGATIONS**

The Trustee accepts the Trust imposed upon it but only upon and subject to the following express terms and conditions:

8.01 Limitation of Liability. In no event shall the Trustee be liable except for its negligence, gross negligence or willful acts or omissions in relation to its duties hereunder.

8.02 Reliance on Documentation. The Trustee shall be protected in acting in accordance with the provisions of this Trust upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

8.03 Right to Demand Documentation. Notwithstanding anything else in this Trust, in the administration of the Trust Fund, the Trustee shall have the right, but shall not be required, to demand before the disbursement of any cash or in respect of any action whatsoever within the purview of this Trust, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof that the Trustee reasonably believes to be necessary or desirable.

8.04 Trustee's Compensation. The Trustee shall be compensated for its services hereunder in accordance with Exhibit A attached hereto.

8.05 Limitation on Financial Liability. No provision of this Trust shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties as Trustee hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, nor to take any action pursuant to this Trust, which in the judgment of the Trustee may reasonably conflict with any rule of law or with the terms of this Trust.

ARTICLE IX **SUCCESSOR TRUSTEES**

9.01 Resignation of Trustee. Any Trustee may resign by giving not less than sixty (60) days written notice to EPA and the Elem Tribe, and such resignation shall take effect upon the day specified in such notice, unless a successor Trustee shall have been sooner appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment by a successor Trustee. If any individual Trustee becomes mentally or physically unable to serve, a certificate so stating from such Trustee's then attending physician shall constitute such Trustee's resignation. If any Trustee shall be dissolved or in the course of dissolution or liquidation, or otherwise unable to continue to act as Trustee, as finally determined by the EPA, a certificate so stating from the EPA shall constitute such Trustee's resignation. The Trustee's resignation shall be recorded as provided in this Trust Agreement immediately prior to the recording of the successor Trustee's acceptance or upon the effective date of resignation, whichever is earlier.

9.02 Removal of Trustee. The Trustee may be removed by written request of EPA only for good cause, such as the failure to faithfully perform any of the duties and responsibilities required under this Trust Agreement or to comply with any of the terms or conditions of the Consent Decree, provided, however, that the Trustee may be removed by joint written request of

EPA and the Elem Tribe only for good cause where the grounds for such removal are related to Parcels 33, 39, 57, 58, and 81. Disputes shall be resolved by the United States in the United States District Court for the Northern District of California.

9.03 Appointment of Successor Trustee. If Tom Connolly or any successor Trustee ceases to serve as Trustee, a successor trustee may be appointed by the EPA by an instrument in writing, signed by EPA's and the Trustee's Authorized Representatives, and delivered to the successor Trustee. In the event that no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within 60 days after vacancy shall have occurred, any interested person (including the United States or EPA) and/or any retiring Trustee may apply to the court with continuing jurisdiction as provided in Section 10.03 hereof for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, prescribe or appoint a successor Trustee. Each successor Trustee shall qualify upon written acceptance attached hereto and recorded as provided in this Trust Agreement and thereafter shall have the same powers, immunities, and discretions as the original Trustee.

9.04 Transfer to Successor Trustee. Upon any successor Trustee's qualification, as provided in Section 9.02, such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, trusts, duties, and other obligations hereunder of its predecessor; but such predecessor shall nevertheless, upon written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, and trusts of such predecessor; and every predecessor Trustee shall deliver all securities and money held by it to its successor; provided, however, that before any such delivery is required or made, all reasonable, customary, and legally accrued fees, advances, and expenses of any such predecessor Trustee shall be paid in full.

ARTICLE X **MISCELLANEOUS**

10.01 Particular Words. Any word contained in the text of this Trust shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated the word "person" shall be taken to mean and include an individual, partnership, association, company or corporation.

10.02 Severability of Provisions. If any provision of this Trust or its application to any person or entity or in any circumstances shall be held to be invalid and unenforceable, the application of such provision to persons or entities and in circumstances other than those as to which it is invalid or unenforceable, and the other provisions of this Trust shall not be affected by such invalidity or unenforceability.

10.03 Governing Jurisdiction. This Trust shall be enforceable in the United States District Court for the Northern District of California, which has continuing jurisdiction of the Consent

Decree. The validity, interpretation, and performance of this Trust shall be governed by the laws of the State of California.

10.04 Modification. This Trust may be modified only by the consent of EPA and by order of the United States District Court for the Northern District of California, and only to the extent that such modification does not change or inhibit the purpose of this Trust as set forth in Section 2.02 or allow for distributions other than as provided in Section 4.02.

10.05 Construction of Terms. In the event of any ambiguity or contradiction in the terms of this Trust, such terms shall be construed so as to conform to the provisions of the Consent Decree, where applicable, and so as to fulfill the purposes of this Trust.

10.06 Authorized Representatives. The following are the Authorized Representatives of the Trustee, EPA, and the Elem Tribe.

Trustee:

Tom H. Connolly
Trustee
Connolly Rosania & Lofstedt
950 Spruce Street, Suite 1C
Louisville, CO 80027
Telephone: (303) 661-9292
Facsimile: (303) 661-9555
E-mail: tom@crlpc.com

EPA:

Gary Riley, Remedial Project Manager
U.S. Environmental Protection Agency, SFD-7-2
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3003
Facsimile: (415) 947-3528
E-mail: riley.gary@epa.gov

Elem Tribe:

NAME
ADDRESS

The Trustee, EPA, or the Elem Tribe may, by written notice to the other parties, change its Authorized Representative or notice addresses above.

IN WITNESS WHEREOF, _____, by its duly authorized officer, hereby sets its hand and seal as Grantor and _____, hereby sets its hand and seal as Trustee as of this ____ day of _____, 201_.

FOR BRADLEY MINING COMPANY AND FREDERICK BRADLEY, AS TRUSTEE OF THE
WORTHEN BRADLEY FAMILY TRUST

Dated: _____

Jon K. Wactor
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, California 94612
Tel: (510) 465-5750
Fax: (510) 465-5697
Attorneys for Defendants Bradley Mining
Company and Frederick Bradley, as Trustee of the
Worthen Bradley Family Trust

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: _____
Title: _____
Address: _____

FOR THE REDEVELOPMENT TRUST

Date: _____

Tom Connolly, Esq.
Trustee, Redevelopment Trust
Connolly Rosania & Lofstedt
950 Spruce Street, Suite 1C
Louisville, CO 80027
Tel: (303) 661-9292
Fax: (303) 661-9555

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: _____
Title: _____
Address: _____

APPENDIX G

RECORDING REQUESTED BY:

When Recorded Mail Document
and Tax Statement To:

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$

- [] computed on full value of property conveyed, or
- [] computed on full value less value of liens or encumbrances remaining at time of sale,
- [] Unincorporated Area City of ,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

hereby GRANT(S) to

the following described real property in the City of , County of Lake, State of California:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED: _____

State of California)
County of _____)

By: _____

On _____ before me,
_____, Notary Public
(here insert name and title of the officer), personally appeared

By: _____

_____,
who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State
of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

RECORDING REQUESTED BY:

**When Recorded Mail Document
and Tax Statement To:**

APN: 010-029-24
FOR RECORDER'S USE

SPACE ABOVE THIS LINE

GRANT DEED

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- Unincorporated Area City of ,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Frederick W. Bradley, Trustee of the Worthen Bradley Family Trust (GRANTOR), hereby GRANT(S) to

the Redevelopment Trust (GRANTEE)

the following described real property in the unincorporated area ***[**Confirm that property is located in unincorporated area**]*** of the County of Lake, State of California:

[**Insert Property Description for Parcel 24], and as further shown on Exhibit A, attached hereto and made a part hereof;

Reserving to the Grantor:

a non-exclusive right-of-way Easement along the existing road extending across the lake-front northerly boundary of Parcel 24 (APN No. 010-029-24), running from the eastern boundary of Parcel 24 to the western boundary of Parcel 24 with Parcel 28, for purposes of ingress, egress, and all utilities, poles, and lines for the benefit of Parcel 28 (APN No. 010-002-28) (hereinafter "Easement"), twenty (20) feet in width, being ten (10) feet on each side of, and perpendicular to, the following described center line:

[**Insert Property Description from survey of center line of existing road extending across the lake-front northerly boundary of Parcel 24, running from the eastern boundary of Parcel 24 to the western boundary of Parcel 24], and as further shown on Exhibit B, attached hereto and made a part hereof.

The Easement is subject to the following provisions and conditions:

1. Within the Easement boundaries, Grantor's right to use and maintain such road in a good, safe, driveable condition shall include the right to grade, gravel, replace, slope the banks, install necessary culverts and utilities, trim any trees and brush that obstruct the use of the Easement, and generally perform any other customary maintenance or repair it deems necessary to maintain the Easement.
2. Grantor's installation, operation, maintenance, repair, and replacement of the road and all utilities, poles, and lines in the Easement shall be performed without expense to the Grantee.
3. Grantor's installation, operation, maintenance, repair, and replacement of the road and all utilities, poles, and lines in the Easement shall be done with as little inconvenience to the Grantee as is consistent with reasonable progress. Any property damage to the servient estate of Parcel 24 resulting from Grantor's installation, operation, maintenance, repair, and replacement of the road and all utilities, poles, and lines in the Easement shall be promptly and properly corrected to the reasonable satisfaction of the Grantee.
4. Grantor's installation, operation, maintenance, repair, and replacement of the road and all utilities, poles, and lines in the Easement shall be done in a manner that complies with all applicable federal, state, and local laws and so as to prevent and avoid any threatened or actual release or disposal of any hazardous substance, except as in compliance with any applicable federal or state environmental laws.
5. Grantor shall provide written notification to Grantee prior to ingress for purposes of installation, maintenance, repair, and replacement of the road, utilities, poles, and lines in the Easement.
6. Grantor's use of the Easement shall not cause erosion, flooding or drainage problems to Parcel 24. If Grantor's use, construction or installation of the road or utilities in the Easement cause erosion, flooding or drainage problems to Parcel 24, then Grantor shall promptly and properly correct the problems to the reasonable satisfaction of the Grantee.
7. Grantor shall either relocate, or take care not to disturb, any and all existing gas lines, sewer lines, water lines, poles, and all other utility lines and pipes that may be disturbed during the course of installation, operation, maintenance, repair, or replacement of the road or utilities in the Easement.
8. Grantor shall protect any existing boundary markers removed as a result of road or utility installation in the Easement and shall reset them in their original locations.
9. Neither party shall erect or construct any structure, fence, gate, plantings or other obstruction to the use of the Easement without the prior express written permission of the other party. If either party constructs a locked gate on Parcel 24 that obstructs the use of the Easement, both parties shall be provided with keys to the lock.
10. In the event that the Easement, or any parts thereof, appear(s) to be abandoned, then the Grantee shall provide written notice to Grantor, its successors or assigns, and Grantor shall have 90 days from receipt of the notice to show that the Easement is not abandoned or to agree that the Easement is abandoned. Upon Grantor's notice of abandonment, the Easement shall revert to and become vested in the Grantee as fully and completely as if the Grant Deed had not been subject to the abandoned Easement or parts thereof. The

termination shall be effective as of the date of such notice. If Grantor does not respond within the 90-day period, then the Easement shall be deemed abandoned and shall revert to and become vested in the Grantee as fully and completely as if the Grant Deed had not been subject to the abandoned Easement or parts thereof.

- 11. The provisions and conditions of Grant Deed shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of both parties hereto.

DATED: _____ By:

By:

State of California)
County of _____)

On _____ before me,
, Notary Public
(here insert name and title of the officer), personally appeared

,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

APPENDIX H

EASEMENTS – SULPHUR BANK MERCURY MINE SITE AND RELATED AREAS

Date Recorded: October 3, 1906
Location: Book 39, Page 160 of Deeds
Reserved by: William S. Trevis
Purpose: Right of way, 200 feet in width
Parcel(s): 12, 29, 30, 32, 33, 57, 58

Date Recorded: August 20, 1909
Location: Book 42 of Deeds, Page 392
Purpose: Road
Parcel(s): 39

Date Recorded: July 8, 1927
Location: Book 24, Page 28 of Official Records
Grantee: California Telephone and Light Company
Purpose: Electrical facilities and related incidental purposes
Parcel(s): 29, 30, 33

Date Recorded: November 7, 1927
Location: Book 29, Page 98 of Official Records
Grantee: California Telephone and Light Company
Purpose: Electrical facilities and related incidental purposes
Parcel(s): 29, 30, 32, 33

Date Recorded: August 13, 1929
Location: Book 57, Page 285 of Official Records
Grantee: Northern California Telephone Company, a Corporation
Purpose: Right of way twenty feet in width, together with rights of ingress, egress and incidental purposes as disclosed therein
Parcel(s): 29, 30, 33

Date Recorded: October 9, 1931
Location: Book 75, Page 292 of Official Records
Reserved by: George J. O'Brien and James M. O'Brien Trustees of Clear Lake Company in grant deed.
Purpose: Perpetual right of way over existing roads
Parcel(s): 12, 25, 28, 29, 30, 33, 39, 57, 58

Date Recorded: November 20, 1933
Location: Book 88, Page 467 of Official Records
Reserved by: George T. Ruddock and Emma H. Ruddock
Purpose: Easement: Road, pipelines, transmission lines, or other similar conveniences
Parcel(s): 29, 30, 32

Date Recorded: February 6, 1942
Location: Book 142, Page 75 of Official Records
Grantee: Pacific Gas and Electric Company
Purpose: Easement for electrical facilities and related incidental purposes
Parcels: 29, 30, 33

Date Recorded: October 2, 1942
Location: Book 145, Page 287 of Official Records
Grantee: George T. Ruddock, et ux
Purpose: Right of way over existing roads
Parcel(s): 12, 29, 30, 32, 33

Date Recorded: October 2, 1942
Location: Book 145, Page 290 of Official Records
Grantee: P.R. Bradley and Mabel Bradley
Purpose: Right of way over existing roads
Parcel(s): 12, 29, 30, 33

Date Recorded: ?
Location: Book 168 of Deeds, Page 194
Grantee: Pacific Gas and Electric Company
Purpose: Transmission and distribution of electricity
Parcel(s): 57, 58

Date Recorded: October 20, 1952
Location: Book 229, Page 445 of Official Records
Grantee: Keith D. Ward and Elsie M. Ward
Purpose: Road right of way
Parcel(s): 12

Date Recorded: February 26, 1962
Location: Book 369, Page 237 of Official Records
Reserved by: Bradley Mining Company, a California corporation
Purpose: Right of way
Parcel(s): 29, 30, 33

Date Recorded: August 10, 1966
Location: Book 500, Page 595 of Official Records
Grantee: The Pacific Telephone and Telegraph Company
Purpose: Communication facilities
Parcel(s): 12

Date Recorded: August 18, 1966
Location: Book 500 of Official Records, Page 597

Grantor: Helen Pope Bradley, a widow
Grantee: The Pacific Telephone and Telegraph Company
Purpose: Indenture: Easement for underground communication utilities
Parcel(s): 39

Date Recorded: October 11, 1969
Location: Book 473, Page 594 of Official Records
Grantee: The Pacific Telephone and Telegraph Company
Purpose: Road
Parcel(s): 39

Date Recorded: August 11 (November 24?), 1970
Location: Book 649 of Official Records, Page 63
Grantor: Adolph C. Meyer and Frederick W. Bradley, Trustees of the Worthen Bradley Trust
Grantee: United States of America
Purpose: Grant of Easement: Easement for road purposes. Drawings of easement attached to document.
Parcel(s): 29, 33, 57, 58

Date Recorded: September 23, 1971
Location: Book 675 of Official Records, Page 557
Grantor: Area Director, Bureau of Indian Affairs
Grantee: Pacific Gas and Electric Company
Purpose: Power pole line easement
Parcel(s): 20

Date Recorded: November 22, 1971
Location: Book 681, Page 127 of Official Records
Grantee: The Pacific Telephone and Telegraph Company
Purpose: Right of way
Parcel(s): 29

Date Recorded: October 30 (9, 10?), 1972
Location: Book 713 of Official Records, Page 230
Grantor: Worthen Bradley Trust
Grantee: EL-EM Indian Colony, former known as Sulphur Bank Indian Rancheria
Purpose: Grant of Easement: For domestic water and sewer lines.
Parcel(s): 29, 30, 57, 58

Date Recorded: April 27, 1999
Location: 1999-006854
Grantor: Frederick W. Bradley, as Trustee of the Worthen Bradley Trust
Grantee: Clearlake Oaks County Water District, a public entity

Purpose: Easement Deed: This easement is for an underground water pipeline.
Parcel(s): 33, 57, 58

Date Recorded: September 6, 2007

Location: Instrument No. 2007020845 of Official Records

Grantee: Dennis P. Pluth, Trustee of the Dennis P. Pluth Revocable Trust of 1999

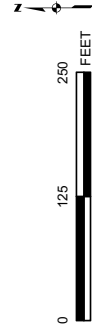
Purpose: Right of Way

Parcel(s): 33

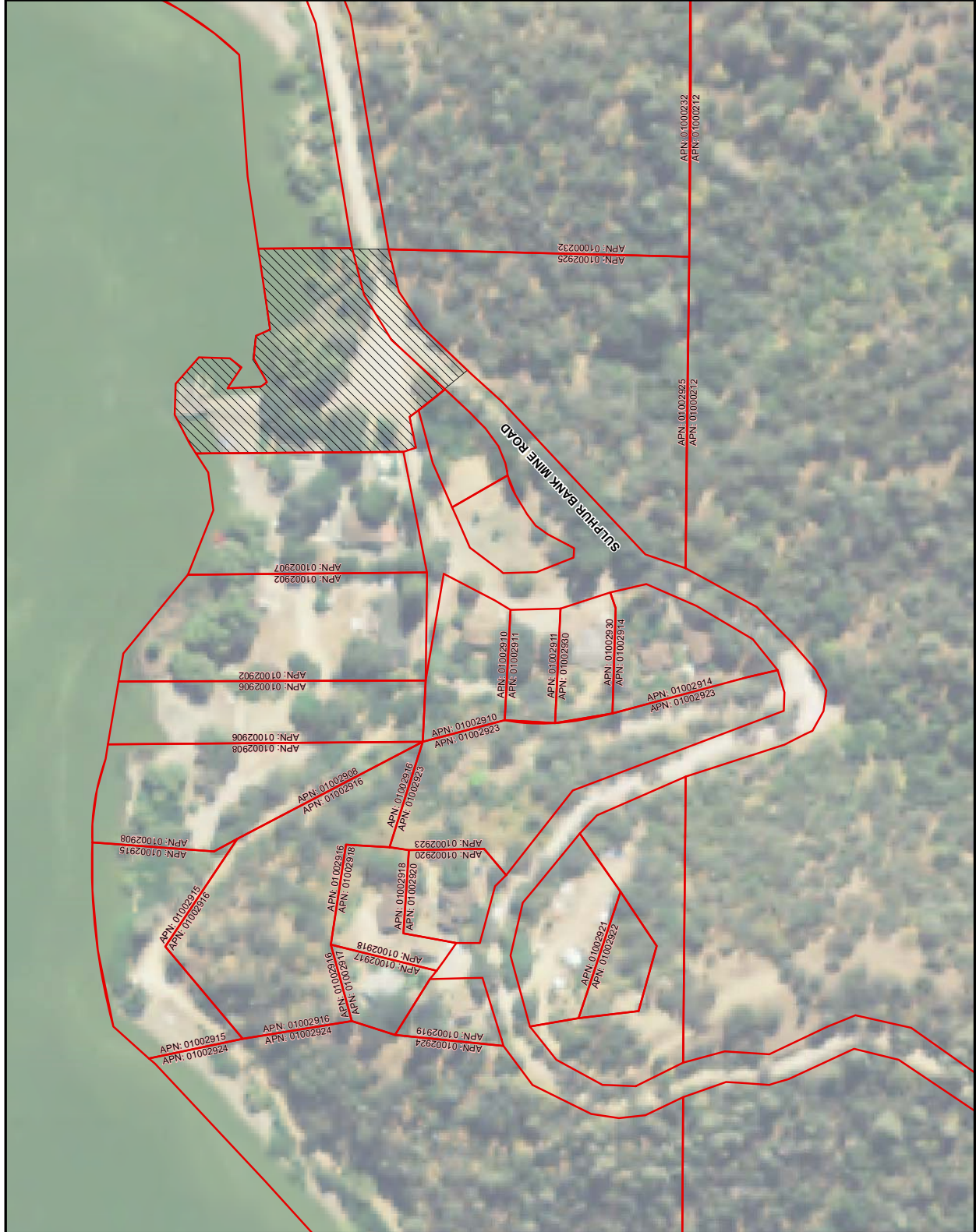
APPENDIX I

LEGEND

- CURRENT PROPERTY AND ROADWAY
- EASEMENT BOUNDARIES
- PROPOSED RESTRICTED AREA ON APN 01002925
- MINE-SITE SURFACE WATER

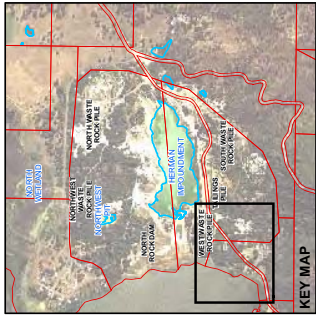


APPENDIX I
PROPOSED RESTRICTED AREA
ON APN 010002925
 SULPHUR BANK MERCURY MINE

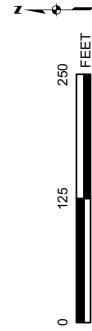


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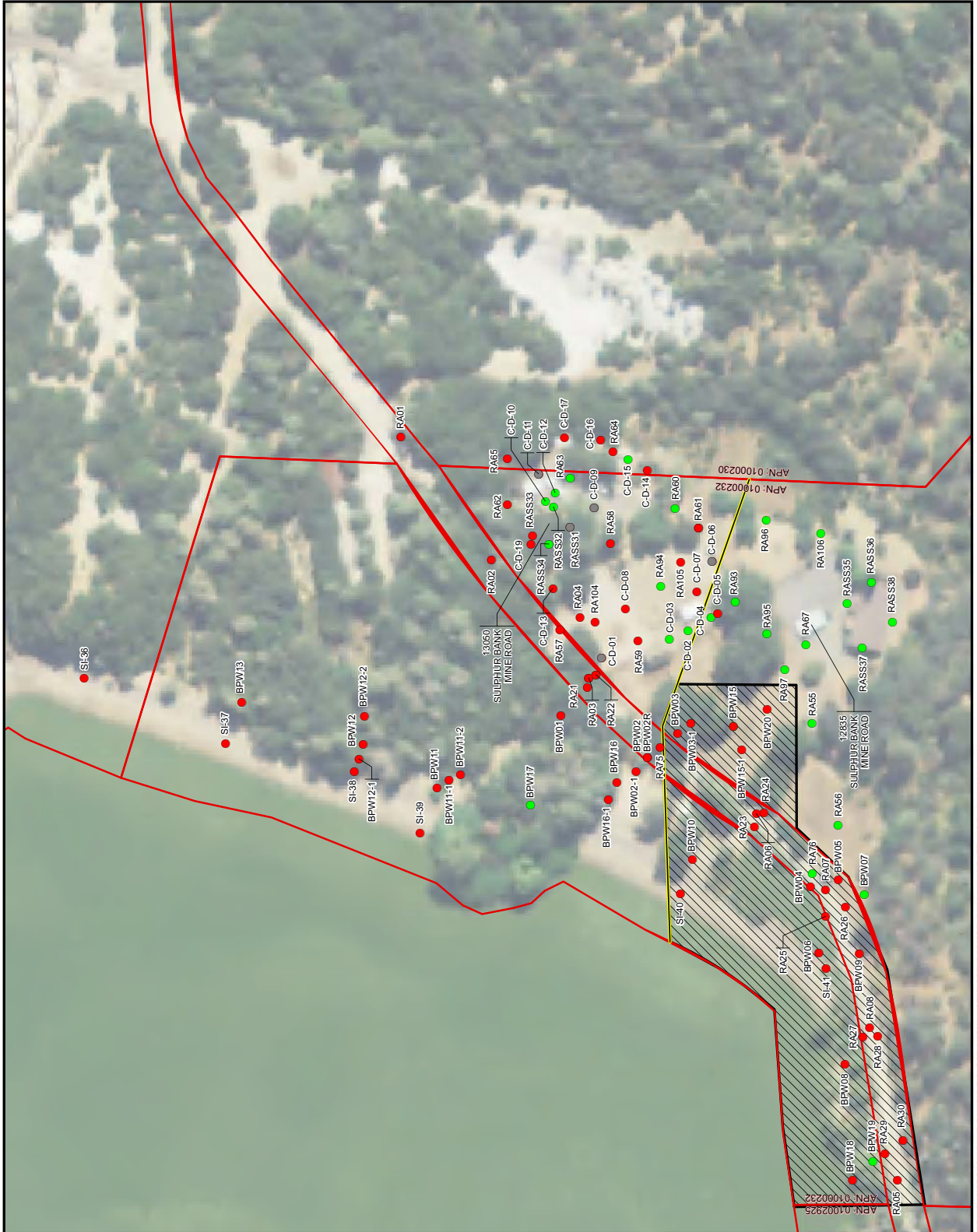
APPENDIX J



- LEGEND**
- ARSENIC, MERCURY, OR ANTIMONY CONCENTRATIONS LESS THAN SBMM RESIDENTIAL HUMAN HEALTH SCREENING LEVELS
 - ARSENIC, MERCURY, OR ANTIMONY CONCENTRATIONS EXCEED SBMM RESIDENTIAL HUMAN HEALTH SCREENING LEVELS
 - SAMPLE AREA REMOVED DURING 2008 REMOVAL ACTION
 - REVISED PARCEL BOUNDARY FOR APN 01000230
 - CURRENT PROPERTY AND ROADWAY EASEMENT BOUNDARIES
 - ▨ PROPOSED RESTRICTED AREA ON APN 01000232
 - ▭ MINE-SITE SURFACE WATER



**APPENDIX J
PROPOSED RESTRICTED AREA
ON APN 01000232**
SULPHUR BANK MERCURY MINE



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APPENDIX K

RECORDING REQUESTED BY:

[Placeholder for Elem Tribe]

When Recorded Mail To:

Bradley Mining Company and the
Worthen Family Bradley Trust
c/o Jon K. Wactor
180 Grand Ave, Suite 950
Oakland CA 94602

APN: 010-002-28 and 010-002-82

SPACE

ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF LIEN
ON REAL PROPERTY

NOTICE IS HEREBY GIVEN by the Elem Pomo Indian Tribe ("Elem Tribe") that it holds a lien on lands and premises described below situated in Lake County, State of California, to secure payment to the Elem Tribe of outstanding sums of money in the amount of fifty thousand dollars (\$50,000.00) for which the Bradley Mining Company ("Bradley Mining") and Worthen Bradley Family Trust ("Bradley Trust") agreed to pay, for valuable consideration, as provided in Paragraph 7 of the Consent Decree, entered on [date] in the United States District Court, Northern District, San Francisco Division (Case No. 3:08-CV-03968 TEH). The lien exists in favor of the Elem Tribe on real property described as "Retained Lands" owned by the Bradley Trust in Paragraph 3 of the Consent Decree, designated by the following property descriptions:

- Lake County Assessor Parcel No. 010-002-28, the Southeast quarter of the Southwest quarter of section 6, Township 13 North, Range 7 West, M.D.M., lying southerly of low water line of Clearlake; and
- Lake County Assessor Parcel No. 010-002-82, the Northeast quarter of the Northwest quarter of section 7, Township 13 North, Range 7 West, M.D.M.

The lien exists until the outstanding payment by the Bradley Mining and/or Bradley Trust is satisfied whereupon the Elem Tribe shall execute and record any and all necessary documentation for the release of the lien.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signed at _____, California this ___ day of _____, in the year _____.

FOR THE ELEM POMO INDIAN TRIBE:

By: _____
Its: _____

State of California)
)
County of Lake)

On this _____ day of _____, in the year _____,

Before me _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Notary Signature _____ (Seal)

